

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION, Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,102

MIDLAND BROADCASTING CO., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,108

ILLIWAY TELEVISION, INC., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,110

TELE-VIEWS NEWS CO., INC., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

On Consolidated Appeal From A Decision Of The
Federal Communications Commission

United States Court of Appeals
for the District of Columbia Circuit

FILED FEB 4 1963

Nathan J. Paulson
CLERK

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JOINT APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMUNITY TELECASTING CORPORATION,)	
Appellant,)	
v.	)	Case No. 17,092
FEDERAL COMMUNICATIONS COMMISSION,)	
Appellee,)	
MOLINE TELEVISION CORPORATION,)	
Intervenor.)	
MIDLAND BROADCASTING CO.,)	
Appellant,)	
v.	)	Case No. 17,102
FEDERAL COMMUNICATIONS COMMISSION,)	
Appellee,)	
MOLINE TELEVISION CORPORATION,)	
Intervenor.)	
ILLIWAY TELEVISION, INC.,)	
Appellant,)	
v.	)	Case No. 17,108
FEDERAL COMMUNICATIONS COMMISSION,)	
Appellee,)	
MOLINE TELEVISION CORPORATION,)	
Intervenor.)	
TELE-VIEWS NEWS COMPANY, INC.,)	
Appellant,)	
v.	)	Case No. 17,110
FEDERAL COMMUNICATIONS COMMISSION,)	
Appellee,)	
MOLINE TELEVISION CORPORATION,)	
Intervenor.)	

PREHEARING STIPULATION

Counsel for Appellants, Appellee, and Intervenor, subject to the approval of the Court, do hereby stipulate and agree as follows:

I. The questions presented by this consolidated case are:

1. Whether the Commission's decision granting the application of Moline Television Corporation, based upon a determination that the criterion of broadcast experience was determinative, was arbitrary and erroneous, unsupported by the record, and failed properly to consider all relevant matters affecting the qualifications of the applicants.

2. Whether the Commission's decision that there were no significant differences among the applicants with respect to the planning of their program proposals was contrary to the record and whether the decision constituted an improper departure from and violation of established Commission policy.

3. Whether the Commission's findings form an adequate basis for its conclusions and whether the findings and conclusions meet the minimum requirements to permit proper judicial review.

II. Appellee and Intervenor reserve the right to argue that Question 3 is not properly before the Court.

III. The brief and joint appendix will be served and filed as follows:

1. Appellants will serve and file a joint and consolidated brief on or before November 8, 1962; Appellee and Intervenor will serve and file their briefs on or before January 4, 1963; and Appellants will serve their joint and consolidated reply brief, if any, on or before January 24, 1963.

2. With the approval of the Court, the joint and consolidated brief of the Appellants, the brief of Appellee, and the brief of Intervenor may each exceed the 50 page limitation set forth in Rule 17(e) of the Court's Rules but shall not exceed 75 pages, with every effort to be made to keep each of said briefs below that length.

3. The joint appendix shall be filed on or before January 29, 1963. References to the record appearing in the various briefs of the

parties shall be to the page numbers in the original record certified to this Court in the consolidated case. In the printing of the joint appendix there will be set forth, in addition to the consecutive numbering of the pages of the joint appendix, the original record page numbers in bold type and indented in a manner which will render it convenient for the Court to locate the pages referred to in the briefs.

IV. By filing a joint brief, the Appellants do not waive their individual right to oral argument, the time to be allocated among the Appellants as they see fit. Each of the Appellants does waive the right to request the additional 15 minute period for which provision is made in Rule 19(c) of the Court's Rules. Appellee and Intervenor reserve the right to request from the Court additional time for oral argument.

* * * * *

September 10, 1962

[Filed Sep. 12, 1962]

Before: Wilbur K. Miller, Chief Judge,
in Chambers.

PREHEARING ORDER

Counsel for the parties in the above-entitled cases having submitted their prehearing stipulation dated September 10, 1962, pursuant to Rule 38(k) of this court, and the stipulation having been considered, the stipulation is hereby approved, and it is

ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

Dated: September 12, 1962

[Rec'd Sep. 13, 1962]

[ENTER

Chief Judge]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

B
FCC 58-616
59727

In re Applications of:

COMMUNITY TELECASTING CORPORATION	)	DOCKET NO. 12501
Moline, Illinois	)	File No. BPCT-2339
Frederick Epstein, Roy B. Cohen,)	
Burt H. Cohen, Milton H. Cohen and)	
Marvin Borman d/b as)	
KSTT TELECASTING COMPANY	)	DOCKET NO. 12502
Davenport, Iowa	)	File No. BPCT-2356
TELE-VIEWS NEWS COMPANY, INC.	)	DOCKET NO. 12503
Moline, Illinois	)	File No. BPCT-2367
MIDLAND BROADCASTING CO.	)	DOCKET NO. 12504
Moline, Illinois	)	File No. BPCT-2370
ILLIWAY TELEVISION, INC.	)	DOCKET NO. 12505
Moline, Illinois	)	File No. BPCT-2428
MOLINE TELEVISION CORP.	)	DOCKET NO. 12506
Moline, Illinois	)	File No. BPCT-2440
PUBLIC SERVICE BROADCASTING COMPANY	)	DOCKET NO. 12507
Moline, Illinois	)	File No. BPCT-2442
IOWA-ILLINOIS TELEVISION CO.	)	DOCKET NO. 12508
Moline, Illinois	)	File No. BPCT-2496
For Construction Permits for New)	
Television Broadcast Stations)	

ORDER

At a session of the Federal Communications Commission held at its offices in Washington, D. C. on the 26th day of June, 1958;

The Commission having under consideration the above-captioned applications, each requesting a permit to operate a television broadcast station on Channel 8, which channel is assigned to Davenport, Iowa, Rock Island-Moline, Illinois; and

IT APPEARING, That the above-captioned applications are mutually exclusive in that operation by all the applicants, as proposed, would result in mutually destructive interference; and

[242]

IT FURTHER APPEARING, That pursuant to Section 309(b) of the Communications Act of 1934, as amended, the above-named applicants were advised by letters that their applications are mutually exclusive, of the necessity for a hearing, and were advised of all objections to their applications, and were given an opportunity to reply; and

IT FURTHER APPEARING, That upon due consideration of the above-captioned applications, the amendments thereto, and the replies to the above letters, the Commission finds that pursuant to Section 309(b), of the Communications Act of 1934, as amended, a hearing is necessary; that Community Telecasting Corporation, Midland Broadcasting Company, Moline Television Corporation, Televiews News Company, Inc., and Iowa-Illinois Television Company are legally, financially, technically and otherwise qualified to construct, own and operate the proposed television broadcast stations; that Frederick Epstein et al, d/b as KSTT Telecasting Company is legally and technically qualified to construct, own and operate the proposed television broadcast station; that Illiway Television, Inc., and Public Service Broadcasting Company are legally, financially and technically qualified to construct, own and operate the proposed television broadcast stations and are otherwise qualified except as to issues "2" and "3", respectively, below;

IT IS ORDERED, That pursuant to Section 309(b) of the Communications Act of 1934, as amended, the above-captioned applications of Community Telecasting Corporation, Frederick Epstein, Roy B. Cohen, Burt H. Cohen, Milton H. Cohen and Marvin Borman d/b as KSTT Telecasting Company, Televiews News Company, Inc., Midland Broadcasting Co., Illiway Television, Inc., Moline Television Corp., Public Service Broadcasting Company and Iowa-Illinois Television Company, are DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether Frederick Epstein et al, d/b as KSTT Telecasting Company, is financially qualified to construct, own and operate the proposed television broadcast station.
2. To determine whether a grant of the application of Illiway Television, Inc. would be consistent with the provisions of

Section 3.636(a)(1) of the Rules, in view of the overlap which would result between the proposed station and Station WREX-TV, Rockford, Illinois.

3. To determine whether a grant of the application of Public Service Broadcasting Company would be consistent with the provisions of Section 3.636(a)(1) of the Rules, in view of the overlap which would result between the proposed station and Station WMT-TV, Cedar Rapids, Iowa.

[243]

4. To determine on a comparative basis which of the operations proposed in the above-captioned applications would best serve the public interest, convenience and necessity in light of the record made with respect to the significant differences among the applicants as to:
 - a. The background and experience of each having a bearing on its ability to own and operate the proposed television broadcast station.
 - b. The proposals of each with respect to the management and operation of the proposed television broadcast stations.
 - c. The programming service proposed in each of the above-captioned applications.
5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

IT IS FURTHER ORDERED, That the issues in the above-entitled proceeding may be enlarged by the Examiner, upon his own motion or upon petition properly filed by a party to the proceeding and upon a sufficient allegation of facts in support thereof, by the addition of the following issue:

To determine whether the funds available to the applicants will give reasonable assurance that the proposals set forth in the applications will be effectuated.

IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, Community Telecasting Corporation, KSTT Telecasting Company, Televiews News, Inc., Midland Broadcasting Co., Illiway Television, Inc., Moline Television Corp., Public Service Broadcasting Company and Iowa-Illinois Television Company pursuant to Section 1.140(c) of the Commission's Rules, in person or by attorney, shall within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

FEDERAL COMMUNICATIONS
COMMISSION

Mary Jane Morris
Secretary

Released: June 30, 1958

[566]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D.C.

B
FCC 59-95
68342

MEMORANDUM OPINION AND ORDER

By the Commission: Chairman Doerfer absent.

1. The Commission has before it for consideration (1) a petition to enlarge issues filed July 18, 1958 by Iowa-Illinois Television Co. and pleadings filed in response thereto;^{1/} (2) a motion to enlarge issues filed July 18, 1958 by Community Telecasting Corporation, supplements thereto filed July 21 and August 1, 1958, and pleadings filed in response thereto;^{2/} and (3) requests to accept supplemental pleadings.^{3/}

^{1/} Opposition filed August 26, 1958 by Midland Broadcasting Co. and reply and errata thereto filed August 27 and 29, 1958, respectively, by Broadcast Bureau.

2/ Opposition filed August 26, 1958 by Midland Broadcasting Co.; reply and errata thereto filed August 27 and 29, 1958, respectively, by Broadcast Bureau; opposition filed August 27, 1958 by Illiway Television, Inc.; comments in opposition filed August 27, 1958 and supplement thereto filed October 22, 1958 by Iowa-Illinois Television Company; opposition filed August 27, 1958 by Public Service Broadcasting Company; opposition filed August 27, 1958 and supplement thereto filed October 17, 1958 by Tele-Views News Company, Inc.; reply to oppositions filed September 12, 1958 and replies to supplemental pleadings filed October 22 and 27, 1958, respectively, by Community Telecasting Corporation; and reply to the reply to the supplemental pleadings filed November 5, 1958 by Iowa-Illinois Television Co.

3/ See next page

[567]

2. Community Telecasting Corporation (Community), KSTT Telecasting Company (KSTT), Tele-Views News Company, Inc. (Tele-Views), Midland Broadcasting Co. (Midland), Illiway Television, Inc. (Illiway), Moline Television Corp. (Moline), Public Service Broadcasting Company (Public Service) and Iowa-Illinois Television Co. (Iowa-Illinois) filed applications for construction permits for a new television station to operate on Channel 8 assigned to Davenport, Iowa, Rock Island - Moline, Illinois. By Order of June 26, 1958, released June 30, 1958, the Commission designated these applications for consolidated hearing on certain issues including the standard comparative issue. The subject petitions to enlarge issues were filed July 18, 1958 and sought issues designed to inquire into the financial qualifications of Tele-Views, Midland, Illiway, Public Service, Iowa-Illinois and to inquire into the legal qualifications of Iowa-Illinois. The applications of KSTT and Public Service were dismissed without prejudice by Order of the Chief Hearing Examiner released September 12, 1958, and the remaining applications were retained in hearing status. Commencement of the hearing was rescheduled from October 1 to December 1, 1958 by Order of the Hearing Examiner released September 15, 1958. Subsequently, hearing was rescheduled to commence January 26, 1959.

3/ The requests of Community Telecasting Corporation filed July 21 and August 1, 1958 to accept supplements to the motion to enlarge issues; the request of Tele-Views News Company, Inc. filed October 17, 1958 to accept a supplement to its opposition; and the request of Iowa-Illinois Television Co. filed October 22, 1958 to accept a supplement to its comments in opposition.

* * * * *

[570]

12. In view of the foregoing, IT IS ORDERED, This 3rd day of February, 1959 that the requests to accept supplemental pleadings filed by Community Telecasting Corporation on July 21 and August 1, 1958, by Tele-Views News Company, Inc. on October 17, 1958, and by Iowa-Illinois Television Co. on October 22, 1958 ARE GRANTED; and

IT IS FURTHER ORDERED, That the petition to enlarge issues filed July 18, 1958 by Iowa-Illinois Television Co. IS DENIED; and

IT IS FURTHER ORDERED, That, with the exception of that portion of the motion to enlarge issues directed to the legal qualifications of Iowa-Illinois which will be treated in a subsequent document, the motion to

[571]

enlarge issues filed July 18, 1958 by Community Telecasting Corporation, as supplemented, IS GRANTED only to the extent noted hereinafter by the addition of a new Issue 5 and IS OTHERWISE DENIED in all respects except as to those portions described hereinabove which have become moot or have been withdrawn; and

IT IS FURTHER ORDERED, That Issue 5 in the Order of the Commission adopted June 26, 1958 (FCC 58-616) in the above-captioned proceeding is renumbered Issue 6 and the following Issue 5 is included:

5. To determine whether Tele-Views News Company, Inc. is financially qualified to construct, own and operate the proposed television broadcast station.

FEDERAL COMMUNICATIONS
COMMISSION

Mary Jane Morris
Secretary

Released: February 5, 1959

[583]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D.C.

FCC 59M-215
69685

ORDER

The Chief Hearing Examiner having under consideration a petition by Iowa-Illinois Television Co., filed February 6, 1959, requesting dismissal of its application in the above-entitled proceeding without prejudice;

IT APPEARING, that petitioner's decision to forego the prosecution of its application arises solely "from its unwillingness to risk the additional cost which would be involved in participating in a long, complicated and necessarily expensive six-party comparative hearing";

IT APPEARING FURTHER, that the above proceeding was instituted by order of the Commission released June 30, 1958, and that, following pre-hearing conferences, the formal hearing commenced on January 26, 1959, when petitioner first made known the intention to dismiss its application;

IT APPEARING FURTHER, that each of the other applicants in the proceeding interposes no objection to dismissal of petitioner's application without prejudice, and that consideration has not been paid to petitioner, directly or indirectly, in connection with such dismissal;

10-a

[584]

IT APPEARING FURTHER, that while it is appropriate to dismiss petitioner's application, the reasons for its decision to withdraw from the case, which were not made known until the date of commencement of the formal hearing, supra, would not, in and of themselves, constitute "good cause," within the meaning of Section 1.312(c) of the Rules of the Commission, for dismissal without prejudice (See Mountain State Broadcasting Company, FCC 59M-22; Order released January 9, 1959);

ACCORDINGLY, IT IS ORDERED, this 13th day of February 1959, that the petition of Iowa-Illinois Television Co. is granted to the extent that it seeks dismissal of petitioner's application in the above-entitled proceeding and is denied in other respects, and the said application is dismissed with prejudice.

FEDERAL COMMUNICATIONS COMMISSION,

James D. Cunningham
Chief Hearing Examiner

/s/ Mary Jane Morris
Secretary

Released: February 17, 1959

[4588]

STATEMENT OF FRANK SCHREIBER

(A)

My name is Frank Schreiber. I live at 225 Maplewood Road, Riverside, Illinois. I was born December 3, 1901 at Chicago, Illinois. I am President, director and a stockholder of Moline Television Corporation, and I have agreed to move to and become a resident of Moline upon a grant of a construction permit to Moline Television Corporation. I now reassert that this is my intention.

While I have been associated with various business enterprises, such as the Hillside Savings and Loan Association, the Broadview Insurance Agency and Otto's Restaurant in Forest Park, Illinois, I have

devoted the past three decades of my life to broadcasting, both radio and television. My experience in news dissemination dates back to 1918, when at the age of seventeen I became a stringer and part-time office employee for the Chicago Tribune. I progressed through the purchasing and sports department where I was the assistant sports editor, and in 1931 I became Public Relations Director of WGN, Inc. and coordinated the station's activities with the Mutual network which WGN helped to establish. Beginning in 1941 I served in various executive capacities with WGN, Inc., the licensee of WGN AM-TV, Chicago, Illinois. I was the General Manager of WGN AM-TV for about 15 years, and in that capacity guided the development of the television station from its very infancy.

In addition to my broadcast activities with WGN, I was also a director of WPIX, Inc., operator of WPIX-TV, New York, and a director of the Mutual Broadcasting System.

During my tenure with the radio and television stations I concentrated on developing the local news coverage and public interest

programs of the broadcast stations, and to that end we maintained a separate news department with a staff of four writers, eight announcers, five photographers, plus a film development crew for constant and immediate coverage of local events. From personal contact with many of Chicago's leading figures in public life, I developed news stories, leads and programs. I developed a music staff second to none among independent stations, presenting more live musical [and other cultural]* programs than any other commercial independent station in the country.

One of the programs on WGN-TV was "Spotlight on Chicago" which concentrated on the bringing to the public the full knowledge of the good and bad of the administration of the city. The program was factual and was aimed at the improvement of the city's administration. On news

* Stricken.

10-c

broadcasts the station's reporters, by camera, tape-recorded and eye-witness account, brought to the attention of law enforcement agencies the violations of the law in the area. Programs were at times controversial and in the sense that they were designed to carry a message, they were "editorials." The stations always made certain that all opposing views were given the opportunity to present their position.

We also carried programs devoted to the discussion of public affairs and questions. We originated and carried for many years a program entitled "Press Conference," featuring newspapermen from the area and various civic leaders who discussed programs of public interest. As in the other programs I mentioned, I personally developed the themes and participated in the selection of panelists and guests.

During the time I was manager of WGN-TV, I participated in developing the series of programs devoted to the pre-school child entitled "Time for Adventure" and presented by Tina Redmond of the Chicago Board of

[4590]

Education. These daily thirty-minute programs featured stories and handicrafts for little children. The program "Video Kindergarten" proposed for our Moline station is an outgrowth of my experience with "Time for Adventure."

The television station also carried weekly live full-hour concerts by the world famous Chicago Symphony Orchestra as part of WGN's contribution to the city's cultural life. As part of its contribution in the field of fine music, WGN-AM carried for many years the "Chicago Theater of the Air" and the "Enchanted Hour," both of which featured live production of operas, operettas and other classical compositions. These programs, originated and produced at WGN-AM, were carried to a nationwide radio audience for many years [and were fixtures of America's musical life].*

* Stricken.

[4590]

10-d

WGN, in addition to carrying musical performances, also widely promoted musical concerts, and Sam Gilman, David Parson and I agreed that our television station should lend its facilities to such musical promotion. It was with this in mind that we devised the program "Arts and Science" as a vehicle for such promotion and popularization of cultural activities. As public acceptance increases for such programs, we will develop additional programs of the same nature.

While I was General Manager, our stations carried extensive farm programs. Our radio station carried farm news and reports, especially in the morning and noon hours, as well as other items and programs of interest to the farmer. The station had a regular daily series of talks by authorities in the field of agriculture and management, discussing such problems as "What Valuable Records Should Families Keep," "New Insecticides," "Current Research in Swine Breeding," etc.

[4591]

Television carried news and remote films on a regular basis, with coverage of special events such as The National Dairy Show and Parade, the National Livestock Exposition, and the state and national Corn Picking Contests.

* * * * *

[4594]

STATEMENT OF FRANCIS J. COYLE

(B)

My name is Francis J. Coyle. I reside at 3100 Coaltown Road, Moline, Illinois. I was born on November 29, 1899, in Moline, Illinois. I am Chairman of the Board and a director of the Moline Television Corporation.

After attending Moline public schools, I attended St. Ambrose College, Davenport, Iowa, and received my LLB from the University of Detroit in 1926. While at college I played varsity football, basketball and baseball.

[4598]

10-f

[4598]

STATEMENT OF CHARLES G. AGNEW

(C)

My name is Charles G. Agnew. My address is 2600 Sixth Street, East Moline, Illinois. I was born on August 8, 1914, in Mason City, Illinois. I am a stockholder, director and Vice-President of Moline Television Corporation. I attended Cornell College, Mt. Vernon, Iowa, and Hynes School of Pharmacy in Chicago. I have been a registered pharmacist for over twenty years. I own and operate the Agnew Drug and Camera Store and the Agnew Bike and Hobby Shop both in East Moline. I had been for seven years a manager with the Walgre[e]n Company and prior to that time I was connected with the Medical Service Department of the E. R. Squibb & Sons Company in New York.

Besides my membership in such professional organizations as the National Association of Retail Druggists, American Pharmaceutical Association, Illinois Pharmaceutical Association, Master Photo Dealers Association and Toy Guidance Council of America, I have devoted much of my time to the activities of the area in which I live.

During World War II, I was a member of the Rock Island County Rent Control Board. It was our task to maintain a reasonable level of rentals in the Rock Island County area which at that time was experiencing an industrial boom due mainly to the presence of the Rock Island Arsenal. I devoted much time and effort to that activity in order to protect the interests of the servicemen and defend them from undue gouging.

I have served on the East Moline Board of Education for two terms representing District 37. My other civic activities include the vice-presidency and retail chairmanship of the Association of Commerce of East Moline, vice-presidency of the Quad-City 200 Club, the Elks,

[4599]

Rotary, Optimists, Shrine (Blue Lodge and Consistory) and the After Dinner Club, the latter being an organization devoted to the discussion of public affairs.

10-e

At the present time I am a member of the law firm of Coyle, Stengel & Gilman, Rock Island, Illinois. I have served as a member of the Illinois House of Representatives and as Circuit Judge of the 14th Judicial Circuit of Illinois which encompasses Henry, Mercer, Whiteside and Rock Island Counties. I have also served for ten years as Assistant State's Attorney for Rock Island County under both Republican and Democratic administrations. I am at the present time a Commissioner of the Metropolitan Airport Authority, Moline Illinois, which is a public organization operating the Quad-City airport. Among my other enterprises are the Harms Hotel, Rock Island, Illinois; the Cities Water Co., Royalton, Illinois; and the Midwest Zesto Corporation, manufacturers of soft ice cream [, and Pioneer Motor Service, Inc., a transportation company].*

I am the past exalted ruler of the Moline Elks, member of St. Mary's Catholic Church and a member of the Rock Island Chamber of Commerce.

I became interested in the application for television on the newly allocated Channel 8 about the time that the Commission made its allocation. During my lifetime of residence in the Quint-City area, including my many

[4595]

years of public office, I have come to know the needs of the area for a comprehensive treatment of its many problems on a unified rather than a piecemeal basis. The area of the 14th Judicial District is included within the service area of the proposed television station. In Illinois it is the custom of the Judge to "ride" the circuit, holding court in various cities throughout the district. I am, therefore, acquainted with the problems which arise in the various Governmental divisions of the district.

* * * * *

* Inserted in hand-writing.

10-g

In 1956 I was awarded an automobile for being chosen Druggist of the Month in a nationwide poll conducted by a radio network for outstanding service to the community and the profession of pharmacy. I was also given an award in 1957 by the Illinois Pharmaceutical Association for assistance given in the elevation of the practice of pharmacy.

My activities in my hobby and camera shop keep me in close contact with the various photographic groups in this area. Two of these are very active. They are the Tri-City Cinema and the Color Slide Club. The Tri-City Cinema Club meets at the Iowa Gas and Electric Company meeting room and the Color Slide Club meets in one of the local churches. Both of them conduct monthly contests among the members and are generally devoted to the perfection of the art of photography. In addition to interest in photography, there is also interest in the area of model airplane flying and the Model Airplane Club has a spot set aside for it at the local airport for the flying of model airplanes.

I believe that in connection with the camera clubs, the station should carry a monthly program on which the winners of the contests would appear and on which various members of the club could discuss their various problems, progress and techniques. I have recommended that such monthly program be carried by our station and have committed myself to moderate such show. I have had experience in appearing before public groups and presenting talks and shows. In this manner, I believe I could best bring my experience to bear upon the operation

[4600]

of the station.

* * * * *

[4621]

STATEMENT OF SAMUEL M. GILMAN

(G)

My name is Samuel M. Gilman. I live at 2417-21st Avenue, Rock Island, Illinois. I was born on December 24, 1920, in Davenport, Iowa,

[4621]

10-h

and except for the time spent in school and my period of military service have resided in the Davenport and Rock Island area all my life. I am the secretary-treasurer and a director of the Moline Television Corporation. I attended Augustana College, Rock Island, and was graduated from the University of Chicago and Harvard Law School. I am now a member of the law firm of Coyle, Stengel & Gilman.

I am a member of the American, Illinois and Rock Island County Bar Associations, a director of Citizens for Good Government, director and past treasurer of the Rock Island Community Chest, trustee of United Jewish Charities of Rock Island County, director of Tri-City Jewish Center, past president of B'nai B'rith, Brotherhood Week chairman of the Rock Island County Chapter of the National Conference of Christians and Jews, and a member of the Elks, American Legion and Chamber of Commerce.

When the Federal Communications Commission allocated Channel 8 to this area, I discussed the feasibility of applying for it with my partner, Dick Stengel. I have known Dave Parson for a number of years and between the three of us, we began laying plans for this application.

As a result of my civic activities and a lifetime of residence in the area, I have been aware of the fact that the area included by Rock Island, Davenport, Moline, East Moline, Bettendorf, Milan and Silvis is badly divided between competing jurisdictions which competition often causes a mutual loss to the cities involved. This is illustrated by current annexation disputes and jurisdictional squabbles which have

[4622]

taken place in this area during the years and the lack of over-all community planning.

In planning for the proposed television station we, therefore, determined to include among our stockholders persons from the various areas to be serviced by the proposed television station who had performed substantial civic service, who represented diverse business and professional

backgrounds, and who would be able to draw upon their own knowledge of the area and furnish us with a reliable conduit, through which we could translate the needs of the area into programming and policy. As the number of prospective stockholders grew, it became apparent to me that it would be much easier to obtain the views and information required from each stockholder by personal contact with him rather than at stockholders' meetings.

With this in mind, Dick Stengel, Judge Coyle and I personally discussed from time to time the problems of the station with each of the stockholders of the corporation. They gave us their suggestions and ideas, which the three of us exchanged. These conversations, as well as views expressed at group meetings, convinced me that it would serve little purpose at that time to conduct any detailed survey of the area needs or make program commitments or contacts with the various public organizations, even though the other stockholders and I were aware of the fact that competing applicants would probably conduct such surveys and make such contacts and commitments. The main reason for our opinion was that by virtue of our residence in the area, and our active individual participation in its civic, charitable, cultural and social life, we already possessed sufficient knowledge of the area to assess its community needs.

[4623]

This feeling was further strengthened by knowledge (my own and that of the other stockholders) that the needs of these organizations changed constantly and, since the station would probably not go on the air until some years later, no commitment could be made either by our corporation or the organizations as to the exact programming which would best be suitable when the station actually began operations. Furthermore, from my own knowledge of public service organizations and from the knowledge of the other stockholders who had been active in these organizations, we were well aware that repetitious contact at this time would impose an unnecessary and unproductive burden upon the personnel of these

[4623]

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organizations and upon the Federal Communications Commission. Since none of our stockholders is a professional educator, although several have served on school boards, we felt we should make an exception and contact professional educators.

Since Dick Stengel, Judge Coyle and I were the three stockholders who were always in constant contact with each other and with David Parson and Frank Schreiber, our office became the focal point for the exchanging of ideas and plans for the proposed station. On October 10, 1957, we formally incorporated our group and copies of the charter and the by-laws are included as Exhibits 1 and 2 of our application. Since that time we have had several stockholders' and directors' meetings in which we discussed the various matters resulting in and from the filing of the application. I personally, together with Frank Schreiber and Dave Parson, participated in the drawing up of the program proposal as it was submitted to the Commission, and am responsible for the detailed program descriptions to be submitted in this hearing. At these sessions, Frank Schreiber contributed his knowledge of broadcasting, Dave Parson

[4624]

brought his knowledge of the area and of television operation, while I contributed primarily my knowledge of the area.

While it is impossible to minutely recount here all of the detailed considerations which went into each of the programs which we discussed and proposed, we utilized Frank Schreiber's detailed knowledge of program formats, personnel requirements and production problems in many of our proposals. Thus, Frank's experience with the directing of intense local news coverage has impressed on us the importance and feasibility of such coverage on our proposed station, commensurate, of course, with our own resources and capabilities.

Similarly, Frank's experience in the production and promotion of musical, cultural, educational and public affairs programs was helpful

10-k

to us in translating our own programming ideas into concrete proposals, such as "Press Conference," Video Kindergarten," etc.

Judge Coyle, Dick Stengel and I personally discussed the RCA equipment with Mr. Nichols, that company's representative. I was in continuous contact with Dave Parson and Frank Schreiber as to equipment and other matters, and I personally coordinated the details of the filing of the application and amendment including such items as the biographical and financial information contained in the application.

As a lawyer and secretary-treasurer of the corporation, I will be responsible for the legal and fiscal policies of the station. As a member of the Program Committee I will continue my interest and participation in the formulation of program activities of the station, making certain that the policies and proposals of the station are effectuated. I will devote from ten to fifteen hours per week to these activities.

[4640]

STATEMENT OF ROBERT M. HARPER

(K)

My name is Robert M. Harper, I reside at 777 - 20th Avenue, East Moline, Illinois. I was born December 17, 1891, in Monmouth, Illinois, and have resided in East Moline since 1913.

I am Secretary-Treasurer, director and majority stockholder of the Herald Printing and Publishing Company, East Moline, which publishes the East Moline Herald, a weekly publication with a total circulation of 7,200. I have been publishing this newspaper for thirty-three years.

In 1934 I was elected State Senator from the Thirty-third District. I have also served as the Employers' representative on the first Board of Review of the Illinois Unemployment Compensation Commission, and in 1940-1941 I served as a commissioner of the Illinois Commerce Commission. During the war I served as the director of the western and northern Illinois and eastern Iowa District of the Office of Price Administration. In that capacity I supervised the rationing activities and the price control measures of that office for the area.

My major civic activities involve the past presidency of the local Rotary Club; Post commandership of East Moline Post, American Legion; former presidency and directorship of East Moline Community Chest; and presidency of East Moline Citizens for Good Government.

The area which my weekly publication serves includes the eastern portions of Moline, all of East Moline, Silvis, Carbon Cliff, Barstow and Hampton and has a population of approximately 35,000. At the present time this area is the most rapidly expanding portion of our county. Deere and Company has recently purchased 675 acres in that area to erect an office and administration building.

[4641]

By virtue of my association with the Herald, I have become aware of the changing needs of the area. Aside from the large increase in new population there has been a change in the activities in which this population participates. For example, for many years the East Moline Community Festival was an outstanding event in our area. Leading stars of the entertainment world came to our city and performed before large throngs. That organization has now ceased to exist. Several years ago we had Frankie Laine appear at the Festival. Despite the drawing name of the performer, the attendance was disappointing and, as a result, after we had to raise additional money to cover the deficit, the entire project was abandoned. I believe the advent of television has brought about the abandonment of this undertaking. I mention this as an example of the changing interests of our people.

I mentioned before I was District Director of OPA. In such capacity I appeared on a regular weekly schedule on various radio stations throughout the area discussing the activities of the Administration.

My contribution toward the operation of the station would naturally be in the area of news. My reporters would keep the station alerted to affairs taking place within the area covered by my publication, and I will

10-m

devote an afternoon a week to the review of the station's policies in the area of news.

My acquaintance with the newspaper fraternity would help in obtaining qualified guests for the panel discussion programs such as "Press Conference" on Sunday at 5 P.M. I am available and willing to appear on that program as moderator.

I have made my views known to my fellow stockholders during numerous get-togethers, both formal and informal.

[4851]

Moline Ex. 11

Lambert Engdahl
W E Bettendorf -- P.S. 2237 State St.
George Von Maur Quail & Co., 617
B. H. Ryan -- P.S. St. Bk. of E. Moline
M. R. Beckstrom - 1207 - 5 Ave.

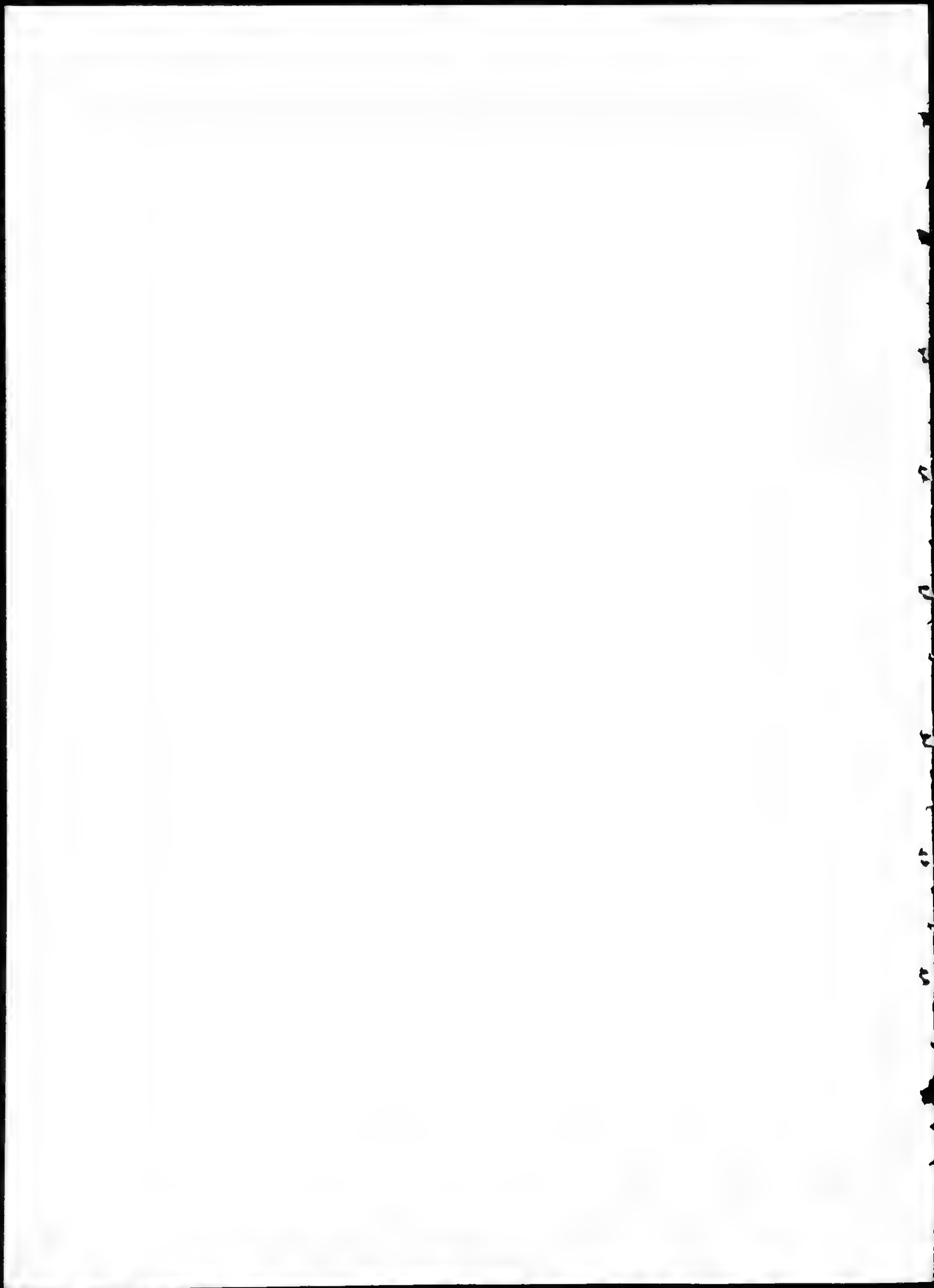
Dear Lambert:

I trust that the guests that you had at the Illiway Dinner at the LeClaire Hotel on Thursday, June 26th, enjoyed themselves.

I think it would be well if we could secure from each of your guests a letter expressing themselves as to their reaction to our proposed Public Service Programming, as outlined by Messrs. Baisch and Mazzie at that meeting.

Enclosed you will find a sample letter that I have drafted, which you can follow if you desire. The main thing to do is to write those people that you invited and who attended and see if we can't get a letter back from them.

The purpose, of course, of all of this is to be in a position at the date of the hearing in Washington, to show that the Stockholders and Directors of Illiway have been active among the various groups in the Community. Will you give this your prompt attention. It will only be a matter of addressing a few letters. If, for any reason, you are unable to get these letters out, to your guests, please let me know and I will be glad to get



[4851]

11

them out for you.

As soon as you receive a response to your letters, will you be kind enough to mail it to me.

Yours very truly,

Bettendorf P.S.

If there was anybody else there that we missed, go ahead and write them.

Ryan: P.S. You will only have to write three letters, to:

George Cramm, Pres. E. M. Kiwanis Club, E. Moline, Ill.

Walter Tiller, Pres., E.M. Silvis Assoc. of Commerce.

We missed one, but perhaps you will recall who else was present from E. Moline.

[5549]

Exceptions of Community Telecasting
Corporation to Examiner's Initial Decision

* * * * *

129. To the finding in paragraph 432, Findings of Fact, that Mr. Schreiber was general manager of WGN-AM-TV "for about 15 years". Mr. Schreiber admitted, under cross-examination, that for about 5 years of this period he was not the general manager but rather the "coordinator" with responsibilities more limited than those of the general manager. (Tr. 3027-28, 3051-56).

130. To the findings in footnote 20 to paragraph 432, Findings of Fact, as incomplete and to the failure to find, in lieu thereof, the following:

Schreiber represented in his employment contract with Moline that in no instance did any station under his management ever encounter difficulty in obtaining renewals from

[5550]

the FCC. (Tr. 3278).

As evidence bearing upon the character of Mr. Schreiber's broadcast experience as broadcast manager and the validity of his representation to Moline in his employment contract, the record reflects the following: A comparison follows of WGN-TV's program proposals, in major program categories, prepared by Schreiber and filed as part of WGN's application for construction permit as amended in 1946 and 1947, and the station's performance record as set out in its first renewal application filed in 1951 (signed by Schreiber as Treasurer) (Tr. 3058-70):

	<u>Proposal</u>	<u>Performance</u>
Education	7.14%	2%
Religious	3.57%	0%
Agriculture	5.36%	0%

This same 1951 renewal application reflected only 20 non-commercial spot announcements, and proposed no religious programming, no agricultural programming and only 1% discussion programming (*Ibid.*). The Commission deferred action on WGN-TV's renewal because of the absence of past religious programming and the fact that none was proposed for the future. (Tr. 3076, official notice, 3083). WGN-TV's renewal was granted after it amended its application to propose 1-3/4% religious programming. (Tr. 3083).

WGN-TV's 1952 renewal application, again signed by Schreiber, proposed 3% religious, and 3% educational programming. However, its 1953 renewal application, again signed by Schreiber, reflected a performance of 1.4% religious and 1.5% educational programming. (Tr. 3084-6). WGN-TV's license renewal was deferred a second time in 1954 on the ground that it was insolvent. (Tr. 3087-88). While Schreiber was manager at WGN-AM-TV, the station also used per inquiry, mail order

advertising, and some commercials which Mr. Schreiber said could be termed "pitch" commercials. (Tr.

[5551]

3126-36, see also Tr. 3229-30, 3232-36). WGN-TV was not an NAB Code member under Mr. Schreiber's management. (Tr. 3245).

Mr. Schreiber left his position at WGN in 1956 at the request of the management after disagreement with them on staffing policy matters. (Tr. 3029-32, 3227). He has not been and has not attempted to get back in the broadcasting business since that date. (Tr. 3027-29, 3032-35, M.Ex. 2(A)). Since leaving the broadcasting business, Mr. Schreiber has held several different jobs for short periods of time, i.e., with the Brotherhood of Electrical Workers for 5 months, with a savings and loan association for approximately one year, and became the owner, with his wife, of a restaurant in May of 1957. (Tr. 3032-36).

* * * * *

[5560]

144. To the finding in paragraph 469(c), Findings of Fact, that Mr. Agnew "will actively supervise the station's local film operations" (Emphasis supplied). On cross-examination on this point, Mr. Agnew expressly admitted that the above statement was too broad and that his role would be limited to responsibility for film handling equipment and for editing and repairing film. (Tr. 2821-24).

* * * * *

[5564]

151. To the failure to add the following to Conclusion 21 with respect to Mr. Schreiber's past experience:

Mr. Schreiber has had no past broadcast experience in the Quint-City market. While Schreiber attempted to take credit for certain public

service programming at WGN (Mol. Ex. 2(A)), the record also shows that while he was manager, action on WGN-TV's renewal of license application was deferred because the station had carried no religious programs.^{26/} It had also carried only 20 non-commercial spot announcements, only 1% discussion programming, and no agricultural programming. It proposed no religious programs for the future. WGN-TV was not an NAB Code station under Mr. Schreiber's tutelage and used per inquiry and mail order advertising as well as some "pitch" commercials. Mr. Schreiber left WGN in 1956 at the request of the management after a policy disagreement and has not since attempted to get back into the broadcasting business. Since 1956 he has had a number of different jobs for short periods of time and is now operating a restaurant. In view of the adverse facts connected with Mr. Schreiber's broadcast experience, it cannot be concluded that his experience should redound in unusual significance to the credit of Moline. (See par. 130, supra.)

* * * * *

^{26/} Schreiber represented in his employment contract with Moline Television that none of the stations with which he had been connected had encountered difficulty in obtaining renewals from the F.C.C.

* * * * *

[6595]

EXCEPTIONS OF
TELE-VIEWS NEWS COMPANY, INC.
TO INITIAL DECISION

* * * * *

Exception No. 7

10. Initial Decision, Findings, par. 168: Tele-Views excepts to the failure of the Examiner to find in addition to paragraph 168 as it now stands:

In some instances Tele-Views has gone to great lengths to assure itself of the feasibility of its plans. For example, it has held detailed consultations with representatives of the College of Agriculture of the University of Illinois to secure the participation of that institution in its educational program proposals (Tele-Views Ex. 9, p. 58, 83). Moreover, in that same connection officials and representatives of Tele-Views have flown to Racine, Wisconsin, home of the J. I Case Company, major manufacturers of farm implements, to secure the cooperation of that organization (Tele-Views Ex. 9, p. 65).

* * * * *

[7035]

FCC 59M-1249
78826

ORDER

IT IS ORDERED, this 24th day of September 1959, that the record in the above-entitled proceeding shall reflect a stipulation between counsel for Illiway Television, Inc. and Moline Television Corp. that the program amendment referred to in Illiway's Exhibit 12, page 6, was signed on June 10, 1958, and filed with the Commission on June 12, 1958, and is the last program amendment submitted by Illiway Television, Inc. in this proceeding; and

IT IS FURTHER ORDERED, that Community Telecasting Corporation's Exhibit No. 60 is received in evidence; and

IT IS FURTHER ORDERED, that the hearing record BE AND IT
HEREBY IS CLOSED.

Charles J. Frederick, Hearing Examiner
Federal Communications Commission

/s/ Mary Jane Morris
Secretary

Released: September 25, 1959

EXCEPTIONS TO INITIAL DECISION
AND REQUEST FOR ORAL ARGUMENT OF
MIDLAND BROADCASTING CO.

* * * * *

4. To the conclusions of the Examiner in Paragraph 26 in their entirety, and to the failure of the Examiner to conclude, in lieu thereof, as follows:

"Based simply upon a 40-hour per week standard applied against the integration representations disclosed by the record, Community has its ownership interest spread among 15 stockholders, their individual interests ranging from 10% to 1%. Time to be devoted to station affairs varies from 100% for Messrs. Wodlinger and Hartz to 12-1/2% in the case of Mr. Whitmore, giving each stockholder the benefit of the doubt wherein the record indicates a variable. Summing the percentages and dividing the resultant figure by the number of stockholders indicates that 100% of the stock ownership could, if necessary, devote some 46.3% of their collective time to the proposed station.

"It is mathematically impossible to determine to what percentage degree Tele-Views News' stockholders will participate in station affairs, although the applicant does represent that its stockholders will do, in effect, what is necessary. Such a representation, however, is hardly a sufficient basis for comparative evaluation.

"Each of Midland's 12 stockholders is proposed for a staff position, and none intends to devote less than 50% of a normal working week to the station. Three stockholders, owning 67% of the stock in the aggregate, intend to devote full time to Midland's activities, and they are all experienced broadcasters. The positions thus filled are General Manager, Program Manager, and Public Affairs Director. Application of the formula to Midland's ownership interests results in a collective percentage of 73.9% devoted to operation and management by ownership.

"Illiway has 20 stockholders with 1.8% of its stock being administered by the estate of a deceased stockholder. Devotion of time to the proposed station varies from fulltime in the cases of Messrs. Baisch and Mazzie, General Manager and Station Manager respectively, to nothing for Messrs. Guyer, Van Alstyne, John Ruhl, Madison, and Mrs. Davis. In some instances, notably Messrs. Carpentier and Klingbiel, the evidence is insufficient to fix with any degree of accuracy the amount of time expected to be devoted to Illiway's broadcast affairs. The stock percentage thus affected amounts to some 3.7% of the total ownership interests. As

[7441]

in the case of Tele-Views News, the record will not support upon any sustainable basis a mathematically exact determination in this regard.

"Moline has one stockholder, Mr. Schreiber, who intends to devote all of his time to the station. He owns 10% of the stock, and he proposes to act as Moline's General Manager. The largest single stockholder holds 12-1/2%, the ownership interests graduating downward to several individuals who own one-half of one per cent. Other than Mr. Schreiber, no one is proposed to be active in the station upon a full-time basis. One 10% and one 9% stockholder each intends to spend about 50% of his time in station activities, the 12-1/2% stockholder and a holder of 5% testifying that they intend to devote a bit more than one-third of their time to the station, with eight others ranging from 25% to 10% as estimated time to be devoted to Moline. Messrs. McLaughlin, who owns 5% of the stock, and Thomas, who owns 5%, intend to devote no time to the station, and the record is bare of any realistic determination with respect to the time expected to be devoted to Moline upon the part of eight stockholders, holding in the aggregate some 24.5% of its stock. Accordingly, the

holders of more than a third of Moline's total stock interest can either be listed as not contributing to integration at all or as unknown.

"From the foregoing, it is concluded that Midland exhibits a marked degree of superiority over all of the applicants in the matter of integration of ownership and management, and it deserves, and hereby is granted, a strong preference as to this factor."

* * * * *

[8182]

**EXCEPTIONS SUBMITTED IN BEHALF OF
ILLIWAY TELEVISION, INC.**

* * * * *

3. Exception is taken to the failure of the Examiner to find in Findings 18-28 that while Mr. Wodlinger was employed as sales manager

[8183]

of WOC-TV the staff of the station included an executive vice-president, a general manager, a program director, a traffic manager, and directors, producers, and that Mr. Wodlinger at no time held any of these positions (R. 911-12). The Examiner also showed that Mr. Wodlinger never had over-all or official program responsibility (Community Ex. 3, pp. 3-6; R. 910-12).

4. Exception is taken to Finding 19 in that it fails to find the capacity in which Mr. Wodlinger assisted the putting of the station on the air. The record shows that Mr. Wodlinger at that time was a salesman for the station, and his contribution consisted of attending and speaking at sales seminars and other related activities. At that time he had no television experience whatsoever (R. 969-70).

5. Exception is taken to Finding 22 insofar as the Examiner gives Mr. Wodlinger credit for conceiving the idea of five-minute live news during the break in the Dave Garroway Show, without indicating that according to Mr. Wodlinger's own testimony such practice was not novel (R. 914).

6. Exception is taken to Finding 25 that Mr. Wodlinger "was responsible for recognizing policy problems in sales and other fields of station operation analyzing them and presenting them to the executive vice-president for decision," without indicating that Mr. Wodlinger's activity in this area is nebulous, at best, and that the record shows Mr. Wodlinger's testimony on this subject is either vague or shows that he made no recommendation at all (R. 917-22).

* * * * *

[8205]

37. Exception is taken to the finding in Finding 469(c), that Mr. Agnew "will actively supervise the station's local film operations." On cross-examination on this point, Mr. Agnew expressly admitted that the above statement was too broad and that his role would be limited to responsibility for film handling equipment and for editing and repairing film (R. 2821-24).

* * * * *

[8206]

44. Exception is taken to the failure of the Examiner to make conclusions based on his own findings, on record of performance, and to award a decisive preference to Illiway on this factor over all other applicants.

* * * * *

[8207]

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[8207]

49 e. Illiway should be preferred on the factor of record of performance over all the other parties.

* * * * *

[8230]

BRIEF IN SUPPORT OF EXCEPTIONS
OF ILLIWAY TELEVISION, INC.

* * * * *

The record of performance of WGN-TV shows a paucity or absence of religious, agricultural and discussion programs. As a matter of fact, a WGN-TV renewal of license was held up by the Commission because of inadequate amount of programs of this type. Furthermore, WGN-TV failed to keep its program promises in regards to these types of programs. Mo-line TV must, therefore, be penalized for this record of poor performance. Toledo Blade Co., supra; Television Broadcasters, Inc., supra. The Commission cannot place reliance on Schreiber for the proposals he has made here.

* * * * *

[8233]

* * * It is important to note that in evaluating the importance and weight to be afforded to the experience of Baisch particularly, the Commission is required, and properly so, to consider the evidence of record as to the nature of the operations which he has conducted. Just as experience is depreciated by weakness in operation, it is "appreciated" by strength in operation. * * *

* * * * *

**PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW
OF MOLINE TELEVISION CORPORATION**

* * * *

CONCLUSION

* * * *

Broadcast Experience

17. The Commission has held that the experience which an applicant brings

[8901]

to the day-to-day operation of the station and the experience which is applied at the policy making and director level are both relevant since both are vital to successful operation.^{58/} Midland secures its experience from the Atlases (66%) and Lujack (3%); Moline from Schreiber (10%), Parson (10%), Agnew (5%), Stengel (9%) and Rehling (1/2%); Illiway from Baisch (4.5%) and Mazzie (1%); and Community from Wodlinger (10%). The evaluation must be weighed in light of the extensive experience of Schreiber in both radio and television; the relatively small stock interest of Baisch and Mazzie and the fact that Wodlinger's experience has been exclusively in sales.^{59/} Only Midland and Moline have experience in more than one member of the Board of Directors with Moline having the greatest number. Where the experience is in the hands of a number of the members of the Board of Directors, the Commission can place greater confidence in such an applicant since it is the Board which operates the station and to whose members the Commission looks for licensee responsibility.^{60/} Giving consideration to the positions in which experience will be utilized and the scope of that experience, the preferences in this category are Midland, Moline, Illiway, Community and Tele-Views.

* * * *

58/ St. Louis Telecast, supra, 726.

59/ Operation and program experience is more important than experience in salesmanship. Triad Television, 16 RR 501, 25 FCC 848, 1024.

60/ Biscayne Television, 11 RR 1113, 1159.

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[9143]

MEMORANDUM BRIEF FOR APPLICANT
MOLINE TELEVISION CORPORATION

* * * * *

Compare Community's position with the decision made by Moline TV's stockholders. Like Community, they too were predominantly local residents. Their own civic activities were wide and effective -- far wider and more effective than Community's. When Moline TV was being organized, its then Washington attorney indicated that the Commission had looked with favor on "contacts" in some past cases. On the other hand, Schreiber, with fifteen years of broadcast experience, maintained that such contacts were worthless and were eye-wash. Moline TV's stockholders knew from their own experience that the needs of the organizations change, that the station may not go on the air for several years, by which time the needs of the organizations and their personnel will have changed. They made their choice to follow the

[9144]

path of integrity and not to attempt to fool this Commission. They now request that the Commission decide which approach betokens greater assurance of licensee responsibility.

In considering this matter, one item should be borne in mind. Had Moline TV wanted to dazzle the Commission with a display of contacts, it could have equalled much of Community's and Illiway's efforts through the mere meaningless procedure of having stockholders sign form letters (as Illiway did) or indiscriminately sending out form letters to addressees apparently picked out from a directory (as Community did).

Contacts with representative individuals and organizations may serve different purposes. First, they may serve to acquaint a stranger in the community with the varying needs and interests of the area. Second, they may serve to confirm that the program plans and proposals of an applicant have the current approval of various individuals and groups. The first purpose is of no value to long-time residents who are informed as to community needs and interests by virtue of long, active and sensitive participation in the social, educational, economic and religious life of the community. The second is of doubtful value insofar as it secures present-day approval of programs to be produced several years hence and is of no possible value if sought after the final program proposals have been submitted to the Commission.

Admittedly, the making of contacts cannot in and of itself be held against an applicant, but no credit should or can be attached to the making of contacts unless a purpose is served. Community felt compelled to make an elaborate display of contacts and has vigorously claimed a preference

[9145]

as a result. Thus, it must be assumed that Community believed a useful purpose was being served by its contacts. A careful reading and analysis of Community's claims clearly shows that the contacts were purportedly made to determine what the area's needs and interests were. This compelling purpose can only reflect a lack of confidence in knowledge that the stockholders of Community possessed or were able to transmit into useful information. It may also reflect the fact that the stockholders were not intelligent participants in Community's activities but were blindly and

passively following the instructions of their paid consultant, Mr. Wodlinger, who, by his own admission, was seeking some tangible proof of stockholder participation.

Whatever may have been the purpose or intent, the over-all result is to conclusively demonstrate that Community's stockholders either lacked knowledge and understanding of what and how they are to transmit their knowledge as stockholders in a television licensee. Either result substantially reduces the value that may be attached to their local residence or their participation in the corporation.

The same critical analysis must be made with respect to Illiway insofar as the program of contacts purportedly involved their local stockholders. Messrs. Baisch and Mazzie as strangers to the community could well have used additional personal knowledge of the area. However, these gentlemen apparently believed that they were sufficiently informed but that there was a need for participation on the part of the local stockholders. As

a result, the program of local contacts was reduced primarily to a meaningless flurry of form letters blindly executed by the local stockholders. Messrs. Baisch and Mazzie limited their participation to two social meetings and a contact with the local librarian.

The cynical attitude and limited purpose of Illiway's over-all program of local contacts is fully revealed by Moline TV Exception #53 (pages 57-63 of attached exceptions). It was all ". . . a matter of addressing a few letters. If for any reason you are unable to get these letters out to your guests, please let me know and I will be glad to get them out for you."

Of all the applicants conducting surveys, only Midland's was honestly pursued to fulfill a need. This applicant, organized and controlled by strangers to the community, pursued a vigorous program of contacts whereby Mr. Atlass secured information which he used in developing his program proposals. These contacts at least fulfilled the original purpose of the criteria, namely, the development of useful information.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C.

Monday, February 9, 1959

[Tr. 709]

The above-entitled matters come on for further hearing, pursuant to adjournment, in Room 1116, New Post Office Building, [Tr. 710] Federal Communications Commission, at 10:00 a.m., before CHARLES J. FREDERICK, Hearing Examiner (The Presiding Officer).

* * * * *

[Tr. 724]

MEL FOSTER

was called as a witness, and having been first duly sworn, was examined and testified as follows:

* * * * *

[Tr. 725]

CROSS EXAMINATION

BY MR. KITTNER:

* * * * *

[Tr. 752]

Q. * * * Now, sir, by what time, approximately, had that portion of your work been completed, and let me give you a reference date if it will be helpful to you. Your last amendment to the application, I think the record will show, was executed on June 5, and filed on June 10, 1958. I would be happy to have you check it with your counsel as to the correctness of those dates.

MR. MILLER: That is correct.

* * * * *

[Tr. 762]

Q. Mr. Foster, for purposes of refreshing your recollection I want to call your attention to the original application of Community in this matter. I call your attention, sir, to Section 4 of your original application which was filed in this proceeding on May 28, 1957. I call your attention to the fact it was 1957. A. Yes.

Q. And I ask you whether you would be good enough to read for the record the various programs percentages contained in that application, just in terms of the designation and the percentage shown. A. Entertainment, 75.7 per cent. Religious, 4.7 per cent. Agricultural, 3.1 per cent. Educational, 3.7 per cent. News, 7.8 per cent. Discussion, 1.9 per cent. Talks, 3.1 per cent.

Q. Who, sir, was responsible for the preparation of this application -- would you care to take a moment to flip through the application quickly so you will feel you are familiar with its contents? A. Well, I don't want to get further confused that I am in all this material --

Q. May I ask you, sir, who signed the application? A. Well, Mr. Hoersch.

[Tr. 763]

Q. And who was indicated as being responsible for the preparation of the various exhibits? A. Mr. Hoersch, that is implied here.

Q. I direct your attention to the bottom portion of the same page. Tell me whether it isn't affirmatively stated that Mr. Hoersch was the person preparing the exhibits? A. Yes.

THE PRESIDING OFFICER: Should we have the spelling of his name for the benefit of the reporter?

MR. KITTNER: I think it would be helpful: H-o-e-r-s-c-h.

MR. MILLER: In that respect, it is fair to point out that the affirmative statement names officer, employee, by whom or under whose direction the exhibit was prepared, and it says "Show which." Actually this doesn't show which.

MR. KITTNER: I will be happy to clear that up.

BY MR. KITTNER:

Q. In view of that, sir, do you know whether in fact Mr. Hoersch was the person responsible for the preparation of these exhibits in terms of this program proposal, specifically? A. Well, the concluding preparation, yes.

Q. To the extent that the application as originally filed reflects certain program proposals, did they carry your endorsement and approval?

A. Yes.

Q. What percentage of ownership did you have at the time?

[Tr. 764]

A. In May of '57?

Q. Yes, sir. Would you care to look at the application again?

A. 20 per cent.

Q. And Mr. Hoersch had what interest? A. 20 per cent.

Q. Now, sir, have you been involved previously in an application for a station in your home community? A. Yes.

Q. And would you state briefly -- let me ask you specifically, did you get a grant of that application? A. Yes.

Q. Do you recall the call letters? A. KDIO.

Q. Would you care to refresh your recollection of that, sir -- I show you, sir, the official records of the Commission covering that application, and always the Commission has misread the call letters, could you glance at the tab on this folder and tell me what the call letters are shown to be? A. KDIO

Q. KDIO? A. Yes.

Q. I show you the application that was granted under the call letters KDIO-TV and ask you who the stockholders in, or what the ownership interest was in terms of who had what

[Tr. 765]

percentage of interest? A. 50 per cent for Mr. Hoersch and 50 per cent for myself.

Q. And I call your attention, sir, to the Section 4 of that application, and will you tell me what the program proposals were in terms of percentages at that point? A. Entertainment, 67.26. Religious, 5.36. Agricultural, none. Educational, 5.35. News, 19.64. Discussion, 2.38.

Q. Now, for purposes of having the record clear, would you care to state, sir, the date on which this application was executed? A. December 6, 1952.

Q. Did you construct that station? A. No, sir.

Q. Did there come a time when you returned, or turned in the permit to the Commission? A. Yes.

Q. Would you care to state, refreshing your recollection from this file, state for the record the date on which that occurred? A. This was the concluding -- November 7, 1953.

Q. Now, sir, when you -- do you recall who signed this application, or would you be good enough to refresh your recollection and state for the record? A. Mr. Hoersch.

Q. And who is shown as the party or parties responsible

[Tr. 768]

for the preparation of the exhibits? I will call your attention to the bottom portion of the signature page. A. If I interpret this correctly, it would be Mr. Hoersch and Mr. King.

Q. And would the responsibility shown for Mr. Daley King have reference to Section 5 matters? A. Yes.

Q. Mr. King is shown to be the consulting engineer, is that correct? A. Yes.

Q. And the rest of the exhibits are shown to have been the responsibility of Mr. Hoersch? A. Right.

Q. Now, these proposals, however, were submitted on behalf of both parties to the application, is that not correct? A. Right.

Q. And did they represent your considered and serious views at the time you submitted the application? A. Yes.

Q. Did you have occasion at one point to file an application for a television station for Miami, Florida? A. Yes.

Q. And with whom were you associated in that application?
A. Mr. Hoersch.

Q. I call your attention, sir, to the file of the Commission

[Tr. 767]

with respect to -- the folder to which I refer is designated BPCT-1611 as the Commission file number, and may I ask you, sir, if you will refer to Section 4 of this application and tell me what the program percentages shown therein are? A. 72.28 for entertainment.

Q. Be sure to read the category in each case. A. Entertainment, 72.28. Religious, 2.72. Agricultural, 2.48 per cent. Educational, 5.94 per cent. News, 7.17 per cent. Discussion, 4.46 per cent. Talks, 4.95 per cent.

Q. And what was the relative ownership interest of you and Mr. Hoersch in this application, sir? A. I had 60 per cent, and he had 40 per cent.

THE PRESIDING OFFICER: Will the record somewhere indicate what channels were applied for in the case of KDIO and the Miami application?

MR. KITTNER: I would be glad to. In Miami, the Commission records, and I will ask the witness to check me, show Channel 7 for the Miami application, and if the witness recalls the Davenport application, he can state it, otherwise I can refer to the record on that.

THE WITNESS: 36.

THE PRESIDING OFFICER: Thank you.

MR. KITTNER: I might state that the Davenport application in terms of file number of the Commission was BPCT-1473.

BY MR. KITTNER:

[Tr. 768]

Q. Now, were the proposals submitted in the Miami proposal

submitted on behalf of both Mr. Hoersch and yourself? A. Yes.

Q. Is it correct that Mr. Howesch signed the application? A. Right.

Q. And is it also correct he is shown to be responsible for the various exhibits prepared? A. Together with McIntosh & Inglis.

Q. Is the firm you have just referred to, sir, the firm of engineering consultants used? A. Yes.

* * * * *

[Tr. 776]

Q. Well, does your statement say you are the principal author, or does it say you assisted in the preparation? I am trying to find out just what your participation was. A. Well, I assisted.

Q. Let me get at it this way. Did Mr. Wodlinger at any point bring a draft of the statement of policies and plans that you went over and approved, or did you knock out a statement and bring it to Mr. Wodlinger and ask for his approval? A. Well, I would think -- I can't answer that question specifically.

Q. If you can't, I don't want you to try. I am curious. Is it because you don't remember how it came about?

MR. MILLER: What page?

MR. KITTNER: I am referring to page 15 of Exhibit No. 2, lines 6 and 7.

BY MR. KITTNER:

Q. Sir, I think I have a question pending.

THE PRESIDING OFFICER: Yes, you do. I assume he is trying to recall.

BY MR. KITTNER:

Q. Just take your time, sir.

MR. MILLER: Do you understand the question that is pending, Mr. Foster?

THE WITNESS: As to the point of my statement, no, I don't. He asked, I believe, if I knocked out any part of the program.

[Tr. 777]

THE PRESIDING OFFICER: No, I think he used the expression slightly differently. By "knocking out", I think these Washington lawyers mean getting something done.

BY MR. KITTNER:

Q. Let me put it in English, if I may. Perhaps I misled you. My question, basically, was: did you prepare the first part of your Exhibit No. 18, entitled "Program Plans and Policies"? If you would care to look at that exhibit and check the reference, perhaps we will overcome the confusion. A. You will never overcome my confusion.

THE PRESIDING OFFICER: Does that mean you keep an open mind?

(Laughter.)

THE WITNESS: Yes.

MR. DOWD: Is that in answer to counsel's question or the Examiner's question?

THE WITNESS: I didn't hear that, sir.

THE PRESIDING OFFICER: On the record it will sound like it is an answer to my question.

BY MR. KITTNER:

Q. The question was whether you were saying yes, you keep an open mind, or yes, you prepared the first draft of Exhibit No. 18? A. I assisted in the preparation of it.

THE PRESIDING OFFICER: Was there a principal author, Mr.

[Tr. 778]

Foster?

THE WITNESS: Well, the statement -- I am confused. I don't want to appear to be too dull here without living up to my usual reputation, but I don't understand the question.

BY MR. KITTNER:

Q. May I explain it this way, sir. I am trying to arrive at some understanding of the part you actually played in the preparation of this exhibit entitled "Program Plans and Policies".

MR. DOBIN: What number is that?

MR. KITTNER: Exhibit No. 18 of Community.

BY MR. KITTNER:

Q. I would be happy, sir, to let you take the time to flip through it on a page-by-page basis, so you can recall the contents, and then ask the question. A. Well, I am ready for the question.

Q. All right, sir, are you the principal author of this document?

A. No.

Q. Is there any one Community stockholder who is the principal author? A. No.

Q. Is there any one stockholder that, in your view, played a greater part than any of the others in the preparation of this document and its contents?

[Tr. 779]

A. Yes.

Q. And who was that, sir? A. Mr. Wodlinger.

Q. And would you tell me what that part was, what did Mr. Wodlinger do with respect to this document? A. Well, this exhibit, "Program Plans and Policies", was developed something along these lines: that the calls made by the participants in Community, various studies having been made relative to the programs and funneling of information that was developed by participants in Community to Mr. Wodlinger.

* * * * *

[Tr. 855]

Tuesday, February 10, 1959

* * * * *

[Tr. 863]

CROSS EXAMINATION (Cont'd.)

BY MR. WELCH:

* * * * *

[Tr. 864]

BY MR. WELCH:

Q. Will you turn to Exhibit No. 18, Mr. Foster, and point out to me the portions of that exhibit which you contributed? A. My contribution to Exhibit 18 was one of officer and director of the company. I believe that answers the question.

MR. WELCH: Will you read the question back to him, please?

(Question read.)

THE WITNESS: I must stay with my answer.

THE PRESIDING OFFICER: It is not responsive, Mr. Foster. I don't know that you understand the question.

THE WITNESS: I am not sure that I do, either, but my --

THE PRESIDING OFFICER: Do you mean how much of this did he write himself?

MR. WELCH: I will clarify the question for him.

THE PRESIDING OFFICER: I think it should be.

BY MR. WELCH:

Q. Are there any sections of this exhibit, paragraphs, sentences, clauses, phrases, or words, that you contributed in the preparation of this exhibit, that you originated, that you suggested? A. The preparation of this exhibit was handled by Mr.

[Tr. 865]

Wodlinger in conjunction with the Board and the officers, and prepared by Mr. Miller for presentation to our Board, as I recall it.

Q. Is your answer to my question "no", that there aren't any?

A. Any direct preparation or terminologies, as such, the answer would be no.

* * * * *

[Tr. 904]

MARK L. WODLINGER

was called as a witness, being first duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. MILLER:

Q. Will you please state your name and residence address for the record, sir? A. My name is Mark L. Wodlinger. I reside at 33 Glenwood Avenue, Davenport, Iowa.

* * * * *

[Tr. 905]

CROSS EXAMINATION

BY MR. KITTNER:

Q. Mr. Wodlinger, as of what time did you begin to devote full attention to the Community proposal? A. October 1, 1958.

Q. And what was your status between the date of the signing of your contract, June 5, and this October 1 date? A. I was employed by the Tri-City Broadcasting Company, Davenport, Iowa.

Q. And what does the Tri-City Broadcasting Company do? A. They own WOC-AM and FM, and WOC-TV.

* * * * *

[Tr. 907]

Q. Now, when did you first become associated in any capacity with Community? A. As I recall, I signed a stock purchase agreement for ten per cent of the stock on May 22, 1958.

Q. Was that the first time that you became associated in any capacity with Community? A. Any official capacity.

Q. I didn't use the word "official." A. I would say earlier they were talking to me, and it becomes an area I don't know how to answer, when they visit with me about joining them, that would be in early May.

[Tr. 908]

I would say it was early May.

Q. Who visited you? A. Originally, I believe it was Mr. Foster.

Q. And the request at that time was what? A. Well, he told me what they were planning on doing, enlarging their group and wanted someone with management experience and wanted to know, more or less to see if I would be interested in going in with them.

Q. And when did you first begin to do work for Community? A. I would again have to guess, along about May -- I may be off, but I would say May 10.

Q. The first part of May, 1958? A. Yes.

Q. And what was your status as between the two groups from May through October? A. Well, when they came to me with this thing, I went and visited with my present employers at the time and discussed it, in fact I had a number of discussions with them about it, so I am again taking a guess of sequence of time. It was a major decision for me to make, giving up a job that I had been in for over ten years, a well established company, and making a change like this.

I would guess I probably talked, negotiated, visited with my present management at WOC for at least a week, and during that time I am sure I didn't do anything for Community.

[Tr. 909]

When I decided to go ahead, I went to our company and told them about my plans, showed them the management contract that had been offered to me, showed them the stock purchase agreement that had been offered to me, and told them I had come to the conclusion that I was going to go into this application.

Q. And that was about May 10? A. I beg pardon?

Q. That was about May 10 of 1958 when the final decision was made that you knew you were going to go with the group? A. It could be the final decision was made on the 10th to 15th, there was a period of time in there of ten days to two weeks. I couldn't honestly give you the exact date.

* * * * *

Q. Now, you referred briefly a moment ago to your association with station WOC-TV. That was in the position of general sales manager?

A. That is correct.

Q. And that was from what year, through when? A. Of the sales manager?

Q. Yes. A. As I recall, Mr. Kittner, I became sales manager on January 15, 1950, if I recall.

[Tr. 910]

Q. And that continued through the time you left in October, is that correct? A. Well, yes, with the exception, of course, I had a replacement that came in September 1, and our executive vice president asked me to stay on through October 1 to train him, so perhaps during the month of September I was sort of, maybe I was sales manager or not. It wasn't clearly defined, but I assume I was until I left at the end of September.

Q. Now, what were the other official positions, if I may use your terminology, that you held while you were at WOC-TV? Did you begin as sales manager? A. No, I was salesman for radio, starting about January 15, 1949, I became a salesman.

Q. So your positions at WOC-TV, or with the other organization, were as salesman and general station manager, is that correct? A. That is correct.

Q. Now, would you tell me, sir, what top staff positions there were at WOC-TV, for example, in September of 1958, or October of 1958, if you prefer, at about the time that you left? A. How far up do you want me to start?

Q. Well, whatever the top positions are that you can recall?

A. Well, at the actual physical operation we have

[Tr. 911]

an executive vice president who is in charge of all of the Palmer enterprises. He was not located in the building of WOC, but was responsible for all policy of all broadcast operations and all business interests of the

Palmers. At WOC we had a general manager.

Q. Who was the general manager at the time that you left? A. Ernest Sanders.

Q. All right, sir, would you continue, please? A. Then the sales manager, we had a program director --

Q. Could you let me be sure I get this. The sales manager would have been you, until you left, is that right? A. Yes.

Q. Now, what was the next one you mentioned? A. Program director.

Q. And who was that? A. Raymond Guth.

Q. Would you continue? A. We had a traffic manager, Janice Wardmann.

Q. Did you have any producers? A. Producers?

Q. Yes, on the staff? A. We had what we called, I would say, director-producers.

Q. You had director-producers. I won't ask you to name those.

[Tr. 912]

Approximately how many of the WOC-TV staff reported to you? A. Directly or indirectly?

Q. For how many of them were you responsible in an official capacity? A. Well, I am still kind of at a loss to answer that. If you tell me directly --

Q. How many salesmen did you have? A. We had at the time I left three television salesmen and we had a radio local sales manager and three radio sales managers, but at the time I did not have the direct responsibility of the local radio sales.

Mr. Sanders, our manager, had been in charge of that for a number of years.

Q. Yours was television? A. National and regional radio sales and all of the television sales.

Q. Now, just to be sure that I understand correctly, at no time during the time you were at WOC-TV were you the executive vice president?

A. That is correct.

Q. And at no time were you general manager, is that correct?

A. That is correct.

Q. And at no time were you program director, is that correct?

[Tr. 913]

A. That is correct.

Q. And at no time were you traffic manager? A. That is correct.

Q. And at no time did you hold the position of director-producer, is that correct? A. That is correct.

Q. I wonder if you would be good enough, sir, to turn to Community Exhibit No. 3, I believe it is. I call your attention to page 3, sir.

Now, at lines 12 and 13, in citing your experience, you give as an illustration the fact that you averaged [arranged] ^{1/} a remote broadcast of a commercial for a local automobile dealer? A. Yes.

Q. Now, is this put here, Mr. Wodlinger, to suggest that this was an unusual or unheard of thing in any fashion? A. No, it was put there to describe the various things which I was responsible for in the operation.

Q. And having arranged a remote broadcast of a commercial for a local automobile dealer, then that simply reflected the practice you engaged in and you knew many other stations of the country had utilized? A. Carrying remote broadcasts?

Q. Yes. A. I am certain a lot of stations have. I am positive of that.

^{1/} Bracketed material represents corrections proposed by Community in Motion to Correct Transcript, December 2, 1959.

[Tr. 914]

Q. Would you look at page 4, sir? Do you have that in front of you? A. Yes.

Q. I call your attention to the bottom portion of that page, stating that you conceived the idea for and instituted live news shows and the

three 5-minute breaks in the Dave Garroway Show. Do you have that in front of you? A. Yes.

Q. The reference that you conceived the idea, is that to suggest this was an original idea on your part? A. Not at all, but at our station it was an original idea, because during that period, up to that time, we had used a card stating the news headline with a voice audio over it. At our station I did it, yes.

Q. This idea that you referred to here, wasn't this in fact the very format that ABC built the Dave Garroway show around -- A. I can't tell about ABC.

Q. NBC, I am sorry. A. How you were to put on your news, I don't think NBC dictated that.

THE PRESIDING OFFICER: Let's take about two minutes, here.

(Short recess taken.)

THE PRESIDING OFFICER: On the record.

BY MR. KITTNER:

[Tr. 915]

Q. On page 5, sir, of your Exhibit No. 3, you have reference to negotiations involving the Sports Television Network.

Did you initiate those negotiations, or did Sports Television Network initiate them? A. I initiated them.

Q. On behalf of the station? A. Yes. They were using WHBF, our competitor station, in previous years is the reason I started it.

Q. At the bottom of that same page, sir, you refer to the ABC Network. Do you have that in front of you? A. Yes.

Q. Was WOC-TV a primary affiliate of ABC? A. No, we had no affiliation with them at all.

Q. And do these negotiations, then, refer to contract negotiations in terms of affiliation arrangements? A. We were not actually the affiliate. WHBF had a secondary affiliation with them and were not clearing all the programs that they wanted to have cleared, and I contacted them, and more or less worked out an arrangement whereby we would carry

some of their shows, make clearances for them, and stipulated the rate of compensation, which I did.

Q. This basically relates to the provision for clearances for certain programs that WHBF didn't carry in the area.

[Tr. 916]

A. Until they were dropped as an affiliate, or they dropped the affiliation, but I think they entered into the same arrangement we did, it was more or less up for grabs, whoever could get them.

[Tr. 952]

[CROSS EXAMINATION] (Cont'd)

BY MR. WELCH:

Q. I want to refer initially, Mr. Wodlinger, to the questions of Mr. Kittner today and to ask you a question or two further on those subjects. First, I would like to direct your attention to your discussion about when you first started working for Community with relationship to the agreement which you signed.

Now, as I understood it, the agreement was signed on May 22, 1958; is that correct? A. My contract with them?

Q. Yes. A. No. I think you will find I said June 5. My stock purchase agreement, I believe, was signed May 22. It should all be in the record. I think the stock purchase was May 22.

Q. And the contract of employment was June 5, 1958? A. I believe so. It is again in the record.

Q. And I believe you stated that you started doing some work for them or conferring with representatives of Community around May 10; is that right? A. That was the area.

Q. Was it true, Mr. Wodlinger, that your conversations from May 10, at least up until May 22, really didn't have much

[Tr. 953]

to do with the preparation of this case; weren't they more in the area of

negotiations with respect to stock subscriptions and contract of employment? A. Would you restate the dates? Did you say May 10 to May 22 that the discussions were all about the contract and stock ownership?

Q. Principally. A. No, I don't think so. I can't give you the exact date, but -- again, I am not 100 per cent sure. I am not trying to be evasive, but I think it would be nearer correct to say I actually came to some conclusion about the 15th to 17th, someplace in that area. I couldn't get down to specific dates. It would be hard to pin down beyond that.

Q. You came to what conclusion? A. Joining Community, and then I immediately started to work on it.

Q. Did you devote much time to the preparation of this case between, let's say, the 16th, assuming that is the correct date, and June 5, when you finally received an employment contract? A. Yes.

Q. How about between May 16 and May 22? A. Yes, between that time.

Q. Do you recall what you were principally concerned with in connection with the preparation for this case; first, between

[Tr. 954]

May 16 and May 22, and then between May 22 and June 5? A. That is a pretty hard thing to break down into categories as to what I was doing during that six-day period and the next six-day period. I think the best way for me to answer is that I was concerned about the entire case, as far as the preparation of what to do. Counsel had come out to Moline, Mr. Miller had come out some time during that period and there was discussion with him and the other stockholders. You can imagine there were innumerable things to do.

* * * * *

[Tr. 968]

Q. Will you take Exhibit No. 3, now, please, Mr. Wodlinger, and turn to page 2, lines 24 and 25, in which you state "In the capacity above

described, I assisted in putting WOC-TV on the air."

Now, at that time you were the sales manager for WOC-AM, FM and TV, is that right? A. No.

Q. What were you at that time?

* * * * *

[Tr. 969]

Q. When did you work on assisting in putting the television station on the air? A. Throughout the summer, I think it was about July 1 we moved into a remodeled building across the street from what was a former WOC studio, and at about that time we had a series of seminars, for example, appliances distributors, appliance dealers. I attended those meetings, I spoke on our plans. I had worked out a plan of test pattern which we offered to the distributors and sold for a number of hours every day. We advised throughout that summer and fall people who were interested in television, we had some closed circuit remotes from the Black Hawk Hotel and from the Fort Armstrong which again would create interest in the

[Tr. 970]

new television station. Those are the things I assisted in, that type of thing. Undoubtedly there were others.

Q. Had you had prior television experience? A. No, I had had none whatsoever.

Q. Now, would you turn, please, to page 3, lines 24 through 29, in which you state that you made the arrangements for and directed several remote wrestling programs from the remote truck at the fairgrounds, and that you also arranged for stock carrying remotes, remotes from the municipal stadium, of several three-A league baseball games, and a remote of the auto show at the Rock Island Armory.

What did the program director have to do with these programs, anything? A. The program director actually did the -- well, I had better take them one by one.

Q. All right, sir. A. This is a kind of integrated thing, as it is in any station, that a number of people participate in these things.

Q. I want you to direct your attention to the statement "made the arrangements for and directed." A. Oh, if you want to break that down, first of all there was a wrestling promoter, and I can't recall whether he is from Davenport or Des Moines. He came to town, and wrestling itself - we had girls wrestling, that was part of it. That I clearly

[Tr. 971]

recall. Whether that was illegal in Illinois and legal in Iowa I am not sure, but I do remember that, and I presume we had male wrestlers, too -- fighting independently, not against each other.

He came in the station and wanted us to televise from the fairground, Mississippi Valley Fairground. The manager, Mr. Sanders, called me in, as we discussed things all the time together, and he said it was a fine idea, "But do you think you can obtain the money to support this?", because we had quite a losing operation back, you can imagine, in 1949 and 1950. I got ahold of the chief engineer and asked him to give me a cost as to what it would cost. There was no clearance problem with the Mississippi Valley Fair. The promoter had arranged for the hall and for the appearance of the performers. That is how you arranged for it.

Getting to the part about how I directed, it was summer time, and at that time we only had one program director, and perhaps one director -- two people. One of the people was either sick or on vacation, so on two occasions that summer I went out with the truck, outside of the ballroom where the wrestling matches were held, and sat in the truck and looked at the little cameras and said take 1, or take 2, and I was directing the remote.

Back at the studio, the commercials were worked in by our regular program director, Mr. Bohl. This is to the best of

[Tr. 972]

recollection when I say I directed several of the remotes. I told them if

they wanted a wide angle shot to use a 35, or if they wanted to use a 90, a 35, an 8-inch or 3-inch, we had the cameras equipped with those various lenses, and went through the normal routine of directing the show.

I hope I have answered your question in part. Did you want me to go on?

Q. No, I wanted you to describe generally what you meant when you said you made arrangements for. A. I used that term, and perhaps I should clear it. I hope that I have not put this out that, in reading this it is sometimes a little embarrassing, that I was the only one at that station. That is entirely untrue. I would like to say, if I may just a second to clear that point up, we were working with a number of people. What happens when you get into television, it drops considerably. Mr. Sanders had been at WOC at that time for about 25 --

MR. DOBIN: I object, Mr. Examiner.

THE PRESIDING OFFICER: I think it is irrelevant and unnecessary.

* * * * *

[Tr. 1006]

Wednesday, February 11, 1959

* * * * *

[Tr. 1016]

[CROSS EXAMINATION] (Cont'd)

BY MR. DOBIN:

Q. Mr. Wodlinger, did Mr. Foster discuss with you the proposed programming of the station at this time? A. In my first conversation with him?

Q. In your first conversation. A. No, I don't think so.

Q. When were you first aware that the programming of the Community station would have to be changed from that originally proposed? A. I would say when he first visited with me and showed me what they had put in as a programming schedule, and then it was, I think, at about the same time, or within a few days -- I think Mr. Miller was out, and

if I am not mistaken, he had copies of what other people had put in, and I think we discussed it, took a look at the other things, and then what I had seen. I think it was more or less -- I don't think it was the first day, but some time during our talks we talked about increasing the schedule because we were not competitive, as far as the existing stations, WHBF and WOC, with the original application they had put in.

Q. Is that the only reason why you proposed to change

[Tr. 1017]

the original schedule, because it would not be competitive with the two existing stations? A. I think that was certainly a factor. I think there were others. I think seeing the other applications that they had proposed, full schedules, and I think to be competitive, that also, at least in my mind, was a consideration.

Q. Were any of the programs originally proposed by Community retained in the schedule you now propose? A. Not to my knowledge. I think I started from the beginning, from scratch.

Q. You junked the whole thing and started over? A. Well, if one appeared on there, I would say that I probably did. I started in. I certainly didn't use it as a guide, let's put it that way.

Q. You did not? A. No.

MR. DOBIN: I have no further questions.

THE PRESIDING OFFICER: Mr. Dowd.

BY MR. DOWD:

Q. Mr. Wodlinger, I would like to go back to the circumstances surrounding your employment. As I understand the sequence of events, you subscribed to your stock prior to the time that you executed your employment contract; is that correct? A. Yes, I believe I said I executed the purchase on

[Tr. 1018]

May 22 and signed the employment contract on June 5.

Q. But the stock subscription agreement was signed in anticipation

of firming up your employment? A. Yes, I had actually been presented both of these documents previous to the 22nd.

* * * * *

[Tr. 1024]

Q. Then in August, about August 22 or August 25, you sent out a tremendous number, I believe about 300 letters -- A. 730.

Q. -- 730 letters to various organizations, and there has been introduced in evidence here as Exhibit 38-A a letter to -- something that is a typical letter, in which you advised the individual to whom the letter is addressed that you are an applicant and that you would like to have their help in suggesting how you might be of service.

Now, in your direct testimony, then, you have referred to those letters to which you received a response; is that correct? A. Yes.

* * * * *

[Tr. 1025]

Q. Now, when you gave these interview forms to your stockholders, you also provided them with a form on which they were to make notes and the suggested form letter that the person being interviewed was to execute; do you recall? A. Yes.

Q. Now, did you make any -- did you do the same thing with these letters, did you suggest any form in which they could reply, or did you enclose anything? A. No, the letter is all I sent, as it is here.

Q. Now, going back to this question of interviews which you assigned to various stockholders, was this your suggestion and idea to the group that you assigned specific areas or

[Tr. 1026]

specific groups to individuals -- A. Yes, it was.

Q. And was it also your suggestion that they have this mimeographed form that they were to make the notes on? A. I provided and mimeographed the blank form.

Q. And you also provided the letter that they were to have the interviewee execute on the second interview when they talked to them?

A. The statement, you mean?

Q. Yes, you know, the blank where they could fill in the blanks, and so forth? A. Yes, I also had those drawn up.

Q. Now, had you ever conducted or ever recommended to WOC-TV that members of their staff or stockholders of that organization conduct similar interviews for the purpose of ascertaining community needs?

A. No, but that is why I suggested to this group, because when you are covering 39 counties like we are, it is just impossible for one person like a program director to maintain these contacts, and one thing about this situation is that, frankly, one of their criteria, as I understand, is integrated ownership in management. This was an area where the stockholders wanted to participate, but they weren't qualified to be news directors, program directors, or what have you, but they were qualified in the field of civic affairs, because

[Tr. 1027]

all of them had long backgrounds in these things.

Geographically having these five communities in the metropolitan area, it made sense to me to set up these committees and conduct this type of survey to find out the needs.

Q. You say that this was one of the criteria. Do you mean you understood that this was a criteria used by the Commission in deciding comparative television cases? A. One of the bases, I understood, was integration of the ownership in the management of the company. That, coupled with the interest that our stockholders had in participating, was the best way and most practical way I could figure out that they could integrate, so to speak.

Q. This was the best way you had of evidencing their interest and their desire to participate in the operation? A. Yes, because they offer to do these things, it is hard to show, the best way you can show is by

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* * * * *

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Q. This was the best way you had of evidencing their interest and their desire to participate in the operation? A. Yes, because they offer to do these things, it is hard to show, the best way you can show is by

going out personally and doing these things, it shows they have an interest, before they actually have a station. And we presume if they are interested, then, to go out and make these calls, they will continue to. As a matter of fact, they have had meetings all along during this period.

Q. Are they making interviews now with these various organizations?

A. No, they have organized within the committees that we have here, I know that those committees have met and talked

[Tr. 1028]

about how they will operate.

Q. But insofar as actual contacts with organizations, you are in, at least at present, a state of suspended animation? A. No. As a matter of fact, I believe it was in the last two weeks we wrote, the individual stockholders wrote every personal contact that they had, to advise them that we were entering into a competitive hearing, that it would be some time before we came to a conclusion, and we wanted to keep them informed as we would continue to do. That was done, I believe, within the last two or three weeks.

Q. In other words, just so they would know you hadn't forgotten about them in the next two years? A. That they would continue to do that.

Q. Now, when you got back reports from these individuals that they did not necessarily approve of what you had suggested in your program content as to, say, time of scheduling, or title, or the length of the program, what change were you able to make in view of the fact that by the time these reports came back your program schedule was already on file with the Commission? A. You have kind of got three parts to that question. The first one, if they asked for a change, for example, in a program title -- for example, I think there were a couple of cases where they wanted "This is Your Life", or they spoke of some CBS program. It was obvious we didn't have any pretense of affiliating with that network, so that was out. I could do

[1029]

nothing with it.

A change in content, we made changes --

Q. Well, your content was not yet -- your program descriptions were not yet on file, were they? A. No.

Q. So you could make any adjustments there that were permissible. I ask as to the time of the program, the length of the program, or the title of the program, which were matters which were already on file with the Commission. A. Well, to the best of my recollection, I am quite sure we had no one criticize the titles of our programs. I may be wrong. After the personal interviews and letters, there could have been one or two, but I think it was insignificant, the number that said we should change the name of a program.

As to the matter of changing times, that is an interesting subject, because I dare say in this room right here I couldn't positively get half the people to agree on time. I am sure if I said the best time for a program was ten o'clock, I am certain there would be a bunch of reasons why it should be eight o'clock. In our contact, he said that the matters discussed were timing of programs. But by far, the majority of those contacts approved, said they were good times. A few said: You should change the program from here to there.

Q. And as to the length of programs, you couldn't do any-

[Tr. 1030]

thing about that, either? A. I couldn't do anything about it, but I again say there were very few comments saying I think it should be longer or shorter. I would say they were very much in the minority.

Q. In most instances, what you say is most of these contacts confirmed your judgment and decisions as to these matters, although there were a few that differed with you? A. There were a few that differed, and I would say that that is basically right, yes.

Q. And in those cases of difference, it is a management decision

as to whether you should adhere to a decision which you had previously made, or whether ultimately when you go on the air you should change?

A. Well, again, part of our continuing survey --

Q. Could you answer the question? It is a management decision, isn't it? A. Not in our particular case.

Q. You mean other people are going to make those decisions, other than management? A. No, we have a committee set up of our ownership, and through them, if you want to consider them as management, I would say that is the reason --

Q. You mean this is going to go through this chain of command that is exhibited or evidenced by the chart which has been the subject of some questioning here?

[Tr. 1031]

A. The whole Community Affairs Committee. This continuing survey will go on and be funneled up to Mr. Josephson, Jr. Those things will be brought to me, and that is where the decision will come from. There will be a continuing survey of needs.

Q. Up through this chain of command? A. Through the Community Affairs Director.

Q. So that you, as the general manager of the station, then, will not make the decision as to the time and scheduling of programs insofar as these organizations are concerned? A. I didn't say that. It will be a joint effort, a management team. It will be a joint effort. If you have stockholders integrated in the thing, I am certainly going to make recommendations based on the surveys they have given me, and I think they are going to go along pretty much with that. My guide will be what they give me as to what they think should be done.

* * * * *

[Tr. 1037]

BY MR. DOWD:

Q. When did you recommend to WOC-TV that they employ a farm

director, Mr. Wodlinger? A. I would guess that has been five or six years ago.

Q. And when did they employ one? A. They still do not have one on WOC-TV.

Q. When did they employ Mr. Allan? A. He works on radio, and he started on a part-time basis I would say about a year ago, was off during the summer and came back in the fall on a program basis.

Q. In other words, he started to work for them, let's say in the spring of '58? A. No, it was probably the fall of '57.

Q. Was he hired as a part of your recommendation? A. No.

Q. In other words, you don't feel that Mr. Allan fulfills the job of being a Farm Director? A. No, it was a matter of money. It was a matter of money. I felt they should put out the money to hire the man full time, and he is on a per-program basis.

* * * * *

[Tr. 1066]

HAROLD W. HOERSCH

was called as a witness, being first duly sworn, and testified as follows:

* * * * *

[CROSS EXAMINATION]

BY MR. KITTNER:

* * * * *

[Tr. 1070]

Q. May I call attention to the official records of the Commission which were in the room and referred to yesterday, and particularly to the Community application under date of May 31,

[Tr. 1071]

1957, to the FCC. Do you have that document in front of you? A. Yes.

Q. Do you have the signature page in front of you, sir? A. Yes, I do.

Q. And are you the gentleman who signed this application? A. I am.

Q. I call your attention, sir, to the bottom portion of the signature page and ask whether you are shown also to have been the party responsible for the various exhibits prepared in connection with this application?

A. I am.

Q. May I call your attention, sir, to Part 4 of this application, and to Section 4, it is, Question 1(b), the portion of the page dealing with program percentages. Do you have that in front of you? A. Yes, I do.

Q. And would you just indicate for the record, sir, each category shown and the percentage shown for the category? A. Number one is entertainment -- you want me to read -- 75.7 per cent. Number two is religious, 4.7 per cent. Number three is agricultural, 3.1 per cent. Number four is educational, 3.7 per cent. Number five is news, 7.8 per cent. Number six is discussion, 1.9 per cent. Number seven is talks, 3.1 per cent.

Q. Now, in the preparation of this application and the program proposals involved, were you the principal author of the

[Tr. 1072]

program proposal? A. The program proposals?

Q. Yes, sir, in your original application. A. I think not entirely.

Q. Would it have been you and Mr. Foster together? A. No, I think that I had help on that from Mr. Wodlinger at that time.

Q. To be sure I understand, so that we don't have confusion, this is May 31, 1957? A. I understand that, sir.

Q. And in connection with this original application, you had help from Mr. Wodlinger? A. I did, sir.

Q. Now, would you tell me the circumstances under which you secured that help? A. Mr. Foster and I had previously filed both an application in Miami and we had filed previously an application for Channel 36, a UHF station, in Davenport, Iowa. I think that Mr. Wodlinger helped us on those two applications, and we paid him on those two applications.

When this matter came up, I had known Mr. Wodlinger for a long time. It is in his field, and I consulted with him with reference to this particular part of that application.

Q. Now, at the time that you consulted with Mr. Wodlinger in connection with this application, did you discuss at that

[Tr. 1073]

time the possibility of his becoming associated with Community? A. I did not. He was otherwise employed. I was satisfied that he would not leave that employment to come with this endeavor.

Q. At that time, sir, even though you had consulted with Mr. Wodlinger, in submitting this proposal, then, you were submitting it as a serious proposal as of the time on the part of Community; is that correct? A. Right.

Q. And the representations contained in the application were seriously made and designed for the Commission to reply on if it so chose; is that correct? A. Right.

THE PRESIDING OFFICER: May I ask a question just to get this chronology straight in my own mind? Did you say Mr. Wodlinger helped you with your application for Channel 36?

THE WITNESS: That is correct, sir.

THE PRESIDING OFFICER: In programming?

THE WITNESS: That is correct, sir.

THE PRESIDING OFFICER: Did he have something to do with the percentages at that time for 36?

THE WITNESS: Yes, I think he did.

THE PRESIDING OFFICER: What year was that, Mr. Hoersch?

THE WITNESS: On Channel 36, I think it was 1954. That is my recollection.

[Tr. 1074]

THE PRESIDING OFFICER: 1954?

THE WITNESS: Right.

* * * * *

[Tr. 1129]

[CROSS EXAMINATION] (Cont'd)

BY MR. DOBIN:

Q. Now, did you discuss with Mr. Wodlinger the hours of operation which Community should propose in May of 1957? A. I believe that is the time we went over the matter, that it was to go on the air about noon, my recollection is 12 o'clock, or something like that.

Q. Was that his suggestion? A. No. I think that the group that we were getting together, the two Josephsons, Mr. Foster, Mr. Ainsworth and I went over that proposition and determined that that would be

[Tr. 1130]

the most advantageous operation for us.

Q. Did Mr. Wodlinger offer you any criticisms of those hours of operation? A. I would say he did not.

Q. Did he at any time thereafter, in your knowledge, offer Community any criticisms of the hours of operation specified in the May '57 application? A. I don't think he ever did.

Q. In 1958 as well? A. Do you mean May, 1958?

Q. That is right. A. Well, by that time he had come into the picture, about the middle of May, 1958. I took it for granted you were talking about the application in May, 1957.

Q. I am sorry if I misled you. I am trying to find out did he ever, in '57 or '58, criticize or say he disapproved of the hours of operation you specified in the application of May, 1957. A. Well, I think that the stockholders and board of directors, as duly constituted before the amended application was filed, went over the application. As to enlarging the hours in the original application from a 12 or 1 o'clock commencing time, they then went over and determined that it should be a station that went on the air as other stations in the community did, at approximately seven o'clock in the morning.

[Tr. 1131]

Q. I don't think that was fully responsive. I am trying to find out what Mr. Wodlinger told you.

MR. PORTER: That would be hearsay, Mr. Examiner. We had Mr. Wodlinger on the stand. I object to what Mr. Wodlinger said about it.

MR. DOBIN: I didn't know Mr. Wodlinger was involved in this when I had him on the stand, and secondly, we are interrogating the witness of what advice he got in his application in May of 1957 and the changes made in Community in May of 1958. I think the question is perfectly legitimate and relevant.

BY MR. DOBIN:

Q. My question was, in May of '58, did Mr. Wodlinger suggest to you that the hours of operation which you specified in May of '57 were not adequate? A. In May of 1958, the stockholders, including Mr. Wodlinger, went over this amended application, or the matter of filing an amended application, and it was determined by the stockholders, including Mr. Wodlinger, that this station should enlarge its hours of operation to start at approximately five or 5:10 five days a week, and 8:10 on Saturdays and Sundays.

THE PRESIDING OFFICER: Start at what time in the morning?

MR. PORTER: He meant 7:10.

THE WITNESS: 7:10 five days a week, and 8:10 on Saturdays

[Tr. 1132]

and Sundays.

* * * * *

[Tr. 1135]

MR. DOBIN: I wish the witness would check me, the May '57 application for Moline, the program proposal was prepared by Mr. Wodlinger. Am I correct?

THE WITNESS: That is correct.

* * * * *

[Tr. 1140]

56

[Tr. 1140]

MR. DOBIN: With respect to the Section I-V statement of program service about which you were interrogated before, do you remember whether Mr. Wodlinger wrote that statement?

THE WITNESS: I wouldn't know that.

BY MR. DOBIN:

Q. Who, other than Mr. Wodlinger, supplied you with any information about programming in connection with the May, 1957 application?

A. Nobody but Mr. Wodlinger furnished any information with reference to programming. However, you are interrogating me about program -- what do you call it -- services? That may have been drawn by attorneys for us.

* * * * *

[Tr. 1182]

Monday, February 16, 1959

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[Tr. 1184]

HERBERT WEINBERG

was called as a witness, and having been first duly sworn, was examined and testified as follows:

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[Tr. 1190]

MR. KITTNER: Would you care for me to state the dates on the record, Mr. Miller?

MR. MILLER: Yes, that would be all right.

MR. KITTNER: The last amendment, sir, aside from a minor corrective amendment, was filed on June 16, 1958. There was within a matter of a couple of weeks, I don't have the date of filing, but another amendment was executed June 25, 1958, and was filed simply making certain clerical and typographical corrections.

* * * * *

[Tr. 1192]

BY MR. MILLER:

Q. Now, isn't it a fact, Mr. Weinberg, that your first contact was made in August of 1958? A. I believe that would be correct, yes.

* * * * *

[Tr. 1992]

Tuesday,
March 3, 1959

* * * * *

[Tr. 2072]

ROBERT W. BOEYE

resumed the stand, and having been previously duly sworn, was
examined and testified further as follows:

CROSS EXAMINATION (Resumed)

BY MR. DOWD:

* * * * *

[Tr. 2083]

Q. But you did send them the five forms? A. That is right.

Q. And you also send them, in cooperation with Mr. Mазzie,

[Tr. 2084]

a list of the names and the organizations that they were to write those
letters to together with an indication of which form they should follow?

A. That is correct. I can't say that there were only five. I know there
were at least five. Those were the five I used. There might have been
six or seven, but whether there were five or seven, I did send them out
to the shareholders.

Q. Together with the list and the indication of the letter that
should be used for each association? A. That is correct.

Q. As a matter of fact, when you sent them out you indicated if
they didn't have time to type and sign them, that you would do it,
didn't you? A. I possibly might, having in mind that maybe some of
our people would be out of town or away.

Q. Well, did you in connection with any of the stockholders type
the letters for them in your office? A. Yes, I did.

* * * * *

[Tr. 2093]

Q. Mr. Boeye, did you attend the luncheon meeting and the dinner meeting that we have been discussing? A. Yes, I did.

Q. How long did the luncheon meeting last? A. Well, as I recall it, it was called for 12, and it actually ran too long, it ran until about 10 to 2.

Q. About an hour and 50 minutes? A. Close to two hours, that is right.

Q. And how long did the dinner meeting last? A. The dinner meeting was called for 6:30, and I think it ran until about 9:30.

Q. As a matter of fact, some of your stockholders suggested they were too long-winded, didn't they?

[Tr. 2094]

A. I think that there was comment made on the luncheon meeting due to the fact that we had educators there that had school duties and had to get back.

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[Tr. 2742]

Tuesday,
March 10, 1959

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[Tr. 2763]

CHARLES G. AGNEW

was called as a witness, and having been first duly sworn, was examined and testified as follows:

* * * * *

CROSS EXAMINATION

BY MR. MILLER:

* * * * *

[Tr. 2798]

Q. My question is simply this, Mr. Agnew: To your knowledge, were any program contacts made by Moline Television Corporation outside of the Quint Cities of Davenport, Rock Island, Moline, East Moline and Bettendorf? A. I don't know.

Q. Do you know where Clinton, Iowa, is located? A. Yes, sir.

Q. How far is that from the Quint Cities? A. Approximately thirty miles.

Q. Do you know whether that falls within your Grade A coverage? A. Grade A coverage? I am sorry, I don't know.

Q. Do you know the population of Clinton, approximately? A. I would say it is approximately 25,000.

Q. Do you know whether it is a county seat or not? A. I don't know.

Q. Do you know whether there is a county agent located

[Tr. 2799]

in Clinton? A. No, sir.

Q. Do you know whether there is a junior high school in Clinton? A. I do not know.

Q. Do you know whether Clinton has an Exchange Club? A. I don't know.

Q. Do you know whether it has a junior achievement organization? A. I don't know.

Q. Where is Prophetstown, Illinois? A. Prophetstown is one of the smaller communities approximately 35 miles east of the Quint-City area.

THE PRESIDING OFFICER: You had better tell the reporter how to spell it.

MR. MILLER: I am not sure myself.

BY MR. MILLER:

Q. You say that is about 35 miles from the Quint-Cities? A. As I recall, yes.

Q. Do you know whether Prophetstown has a Rotary Club?

A. No, I do not know.

Q. Do you know whether there is a teachers' college located there? A. No, I don't.

Q. Do you know whether there is a Soil Conversation Office

[Tr. 2800]

of the Department of Agriculture there? A. No, sir, I don't know.

Q. Where is Geneseo, Illinois? A. Geneseo is about 20 miles east of our area.

Q. Do you know whether there is a Home Advisor of the Agricultural Extension Service located in Geneseo? A. No, sir, I do not.

MR. DOWD: I object to extended questioning on this. There is nothing within the scope of the direct testimony that he has made a check with the Rotary Club of Prophetstown or anything. Again I don't know, it is not represented that he is being held as the agricultural representative of this organization. I don't know where it falls as pertinent.

MR. MILLER: These questions have not been limited to agriculture, in the first place, but throughout your direct case, Mr. Dowd, I believe you have statements that the stockholders of Moline TV are familiar and have knowledge of the needs of the area to be served, and that is why you didn't make any program contacts.

MR. DOWD: And I don't think the Rotary Club in Prophetstown has any significant bearing on any finding that can be made in this proceeding.

MR. MILLER: I am testing this witness' knowledge of the communities within your service area and what he may know about their needs. If he doesn't even know whether there is a

[Tr. 2801]

County Agent there, or this or that, how does he know the needs?

THE PRESIDING OFFICER: You can go ahead. I don't see his name on any of the committees, not that that would necessarily be of significance.

MR. MILLER: My questions are not limited to members of the committee.

THE PRESIDING OFFICER: I realize that.

BY MR. MILLER:

Q. How far is Burlington, Iowa, from the Quint Cities? A. About 80 miles south.

Q. Do you know whether that is within your coverage area?
A. No, sir, I do not.

Q. Do you know whether there is a Lutheran Church School in Burlington? A. No, sir, I do not know.

Q. Do you know whether Burlington has a Ministerial Association?
A. I do not.

Q. Do you know whether there is a Farm Bureau Office located there? A. I do not know.

Q. Do you know who the Superintendent of Muscatine County is?
A. No, sir.

[Tr. 2802]

Q. Do you know who the President of the Wapello, Iowa, School Board is? A. No, sir.

Q. Do you know who the Mayor of Muscatine is? A. No, sir.

Q. Do you know who the Bishop of the Diocese of Davenport, Iowa, is? A. No, sir.

Q. Do you know who is the County Superintendent of Schools of Princeton, Illinois? A. No, sir.

Q. Do you know who the president of the Civic Music Association of the Quad-Cities is? A. No, sir.

Q. Do you know who Mr. Frank Ralston is? A. No, sir.

Q. Mr. Walter Conway? A. No, sir.

Q. Mr. Dunsmore Wood? A. No, sir.

Q. Did you ever hear of the Annual Prime Beef Festival?

A. No, sir.

Q. You never heard of the Prime Beef Festival in Monmouth, Illinois? A. No, sir.

[Tr. 2803]

Q. Would you be surprised to know that that attracts 75,000 people a year? A. I don't doubt it a bit, sir.

Q. Are you familiar with the annual high school band festivals in Galesburg? A. No, sir.

Q. You don't know how many bands participate? A. No, sir.

Q. Or what schools? A. No, sir.

* * * * *

[Tr. 2811]

BY MR. BILGER:

Q. Mr. Agnew, you have testified, I believe you have -- correct me if I am wrong -- that you selected certain of the photographic equipment for your applicant corporation? A. Yes, sir.

Q. And you are also going to be in charge of the film operation, the photography? A. Film handling.

Q. How long have you been in the photographic business, Mr. Agnew? A. About ten years.

Q. And during that ten-year period, you have become, I would assume, somewhat expert in film equipment and photography in general, is that so? A. I wouldn't say an expert, no, sir.

[Tr. 2812]

Q. Did you participate in the selection of the Ampex tape recorder? A. No, sir.

Q. You did not? A. No, sir.

Q. Have you provided, Mr. Agnew, in your proposed equipment list in connection with your Exhibit 4, sound-on-film cameras?

A. No, sir.

Q. How do you propose to provide sound film? A. How do you mean, provide sound film?

Q. Well, for example, you have a show entitled "The Mrs. goes to Market." Do you recall that particular show? A. Yes.

Q. It is a remote from a super market or merchandising store.
A. That program is in the schedule, yes.

Q. And you plan, I would assume, to take some cameras out there. How do you propose to provide the sound on those cameras? A. I really don't know how you could provide sound on film for a program of that type.

Q. Without sound-on-film cameras? A. That is correct.

Q. Which you don't have?

[Tr. 2813]

A. Correct.

Q. You also say that the station will maintain a backlog of specially pre-filmed episodes in order to meet unexpected store closings, late openings, inclement weather and other unforeseen circumstances in describing the format of this "Mrs. goes to Market" program.

How do you propose to do that without sound-on-film cameras?

A. Are you speaking of the same program?

Q. Yes, sir. A. I don't see how it could be done as far as providing a backlog if you are talking about sound on film.

Q. Can you provide the sound any other way that you know of?

A. No, not without a sound-on-film camera. Tape will not synchronize with your regular camera.

MR. DOWD: Would you agree at this point when -- so that it might be clear in the record, when you referred to the program, what the classification of that program was?

MR. BILGER: Yes, indeed. It is an LC-T, talk program.

MR. DOWD: Live commercial?

MR. BILGER: Live commercial, that is right.

THE PRESIDING OFFICER: We will take about two minutes.

(Short recess taken.)

THE PRESIDING OFFICER: On the record.

BY MR. BILGER:

Q. Mr. Agnew, how would you propose that since you don't have sound-on-film cameras to handle your film news situation, local news?

A. Local news would be filmed on a regular 16 millimeter news camera, and then a commentary made by the announcer.

Q. You would have no local sound, that is sound at the same time you are taking your picture, you have no provision for that? A. There is a provision where we could put film on a film track on film, yes. We have a proposal, a supplementary proposal for a Bell and Howell projector to which we could add a magnetic track.

Q. That is not in these exhibits as they now stand? A. What is that?

Q. That doesn't show in your exhibits, does it, Mr. Agnew?

A. Not in this exhibit, no.

* * * * *

[Tr. 2817]

Q. Do you know what vertical jitter is? A. No.

Q. Would you have a recommendation for the brightness range for positive film for television? A. No, sir.

Q. What base lighting level would you recommend

[Tr. 2818]

for studio lighting in your proposed studio? A. I know nothing about the lighting in the proposed studio.

Q. Do you know whether your telecine equipment can utilize negative film? A. What equipment?

Q. Telecine equipment. A. I am not familiar with that equipment.

* * * * *

[Tr. 2821]

BY MR. DOBIN:

Q. Mr. Agnew, have you ever worked at a television station?

A. No, sir.

Q. Have you ever visited a television station? A. Only as a spectator.

Q. Now, do I correctly understand your testimony, which is Exhibit 2-C, I believe, when you say on page 3, "I have been selected as a director of Moline Television Corporation charged with the immediate responsibility for the supervision of the station's film operations."

Is that a correct statement? A. I am charged with the responsibility of the film handling equipment.

[Tr. 2822]

Q. Are you changing your testimony now? A. No. There could be, the way this is written it probably could be misinterpreted, but I am responsible for film handling equipment.

Q. In other words, this should be limited to film handling equipment? A. As far as I am concerned, yes.

Q. Will you supervise the establishment of procedures for the handling of purchased film programs? A. As far as auditing and editing is concerned, yes.

Q. Now, would you direct your attention to Exhibit 5, page 71? Now, will you be responsible for editing feature film? A. For editing feature film?

Q. Yes. Do you know what feature film is? A. I don't believe I do.

Q. Do you know what syndicated film is? A. I think that that is the film that is made by private syndicated film companies and sold to television stations.

Q. Now, referring to this program on page 71, which is described as "Meanwhile, back at the Ranch", will that use syndicated film, do you know? A. I don't know.

Q. Will you use some syndicated film on your station? A. I think that there is some syndicated film in the program.

[Tr. 2823]

Q. And you will be responsible for editing it? A. Yes.

Q. Do you buy this film, do you know? A. I don't know.

Q. Let's take an individual syndicated film you are about to show on the station. Do you know where you would find this film in your station? A. You mean when the film was delivered to the station?

Q. Well, would it be delivered to the station? A. I presume it would.

Q. How long before the showing time would it be delivered?
A. I don't know.

Q. Do you know if you have the right to edit that film?

MR. DOWD: Are you going to introduce -- are you proposing any specific film, Mr. Dobin?

MR. DOBIN: Syndicated film, we are talking about.

MR. DOWD: You are talking about syndicated film.

MR. DOBIN: I will change it to make sure.

BY MR. DOBIN:

Q. Do you know whether you have the right to edit syndicated film? A. I personally have the right to edit it, yes.

Q. The station will have the right to edit it, is that right, is that what you are saying? A. Edit it?

[Tr. 2824]

Q. E-d-i-t? A. Yes.

Q. Will it have the right to edit it -- is your answer yes or no?
A. Do you mean by edit --

Q. Cut a piece out of it. A. I believe not. I might supplement that by saying that you would have to cut a small piece out of it if you have to splice it, if the film is broken.

Q. In other words, do I understand when you say that you will be responsible for editing syndicated film, which will be shown in your station, you are talking about repairing breaks? A. Yes.

Q. But you are not talking about taking pieces out of it? A. I don't know anything about that.

* * * * *

[Tr. 2828]

Q. Did anyone ask you what you thought about the programming of the station, what it should be? A. No, not personally.

Q. Do you know if anyone asked any other stockholder what they thought the programming of the station should be? A. Yes, I am sure that they did.

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[Tr. 2846]

REDIRECT EXAMINATION

BY MR. DOWD:

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[Tr. 2855]

Q. What did you do before 1946? A. I was a medical service representative for E.R. Squib and Sons, a pharmaceutical house in New York City.

Q. And in the performance of those duties, what did you do?
A. I spent fifty per cent of my time selling and fifty per cent doing detail work with physicians and hospitals.

[Tr. 2856]

Q. And did you have an area within which you performed those services?

MR. KITTNER: Objection, Mr. Examiner. I would inquire what the cross-examination was that opened up this area.

MR. DOWD: The question by Mr. Miller on my right as to the knowledge that this witness has of the surrounding territory.

MR. KITTNER: That opens the door, you contend, to a description of his duties with McKesson and Robbins, or with Squib, or somebody in New York?

MR. DOWD: I asked him what territory he performed these services in at the time you made your objection, Mr. Kittner, and if it happens to be in New York State, I will stop.

THE WITNESS: Should I answer the question?

THE PRESIDING OFFICER: Yes.

THE WITNESS: I lived in Davenport, Iowa, and covered nine counties in eastern Iowa and eight counties in western Illinois as a traveling salesman.

BY MR. DOWD:

Q. Were those the counties surrounding Davenport? A. Yes, sir.

Q. Contiguous to the Quad-City area? A. Yes, sir.

Q. Now, certain specific questions were asked you this morning as to whether you knew the President of the Rotary Club,

[Tr. 2857]

and so forth, in various towns. I believe among those towns listed were Prophetstown. Have you been through Prophetstown? A. Yes, I have, a number of times.

Q. Do you know whether it has any particular industry? A. Yes.

Q. What is that industry? A. They have an Eclipse lawn mower factory there that is very well known, nationwide.

Q. How about Clinton? A. I might also add that that town is a shopping area for the surrounding farm trade.

THE PRESIDING OFFICER: Is that the home office of Eclipse?

THE WITNESS: I don't know whether it is the home office. The factory is there. They might have a home office in some other town, but the factory of Eclipse has always been in Prophetstown.

BY MR. DOWD:

Q. Have you ever been in Clinton? A. Many times.

Q. Do you know anything about the community of Clinton, insofar as industry is concerned, or business activities? A. There are a number of light industries in Clinton; namely, the Dupont Celluphane plant; there are some small machine plants there. I do know the area as far as the drug business is concerned, because for five years I called on drug

[Tr. 2858]

stores and the hospitals and doctors in Clinton.

Q. How about Burlington? A. The same thing goes for Burlington. I spent a lot of time in Burlington and contacted doctors. I had hospital accounts and all the drug accounts in Burlington.

Q. Would the same be true for the various cities which are located within an area of, say, sixty miles around the Quad-City area?

A. Yes, sir. I covered everything from Clinton, Iowa, to Keokuk, which is about 150 miles, north and south.

Q. How about Illinois? A. East and west, I covered everything from Fairfield, Iowa, to LaSalle-Peru.

Q. In general, from your own knowledge, what is the make-up of these communities and areas that you have just identified? A. Well, the make-up is primarily the communities that are outside of the Quad Cities, a shopping center for the surrounding agricultural trade, plus light industry. That is, in the smaller towns around.

Q. What is the predominant interest, economic interest, outside of the Quad City area? A. Agricultural.

Q. And is this uniformly true throughout that area? A. Yes, it is.

Q. Now, a question was asked with respect to editorial-

[Tr. 2859]

izing, and you made reference to various committees. You said the Executive Committee would be involved, and also the other committees, and some questions were asked as to how could other committees be involved. Do you have a committee on commercial practices and standards? A. Yes.

Q. Is it conceivable that they might be consulted if a decision were made to editorialize on any particular subject? A. Yes, it could be.

Q. What do you have in mind, if anything?

MR. WELCH: On this subject?

MR. DOWD: I hope.

THE WITNESS: It would be the policy of the station to editorialize on any thought or subject that they would like to take a stand on.

BY MR. DOWD:

Q. And could this stand possibly involve members of the Religious Committee, or any other committee that you might have? A. Yes, definitely.

Q. Is that what -- A. That is my thought, yes.

Q. A question was asked as to whether you would be permitted to edit syndicated film, and you indicated you did not know, and that possibly or probably you would not have

[Tr. 2860]

the right to cut it.

In the event you have a contract with a syndicated film supplier which does not permit you to delete any information, and if you found information in that film was objectionable, what would be your alternatives? A. We wouldn't have to show the film.

Q. Have you checked with Mr. Schreiber, or anyone else, during the luncheon recess as to whether such prohibitions in syndicated film contracts are standard? A. Yes.

Q. And what were you advised? A. That the station is the sole -- has the sole decision on whether or not they wish to show the film.

Q. You mentioned that you did something in connection with a transmitter site. What did you do at the time -- in response to a question by Mr. Dobin -- did you help select a transmitter site?

A. No, sir, I helped make the aerial photograph of the site.

Q. Have you ever prepared any film or made any film which has been used by television stations in the Quad City area? A. Yes, I have.

Q. Would you state, please, what that experience has been?

[Tr. 2861]

A. WOC-TV, in Davenport, have on numerous occasions used high school football film, which I personally have shot, on their sports program, and in 1956 they called me and asked me if I would go to

Evanston with their sports director and film the NCAA basketball tournament, which I agreed to do. We went to Evanston with the announcer and an engineer, who incidentally made a broadcast of a game, and I personally shot the semi-final and the final game, because the University of Iowa was playing for the championship and there was a lot of local interest.

Q. Was that film used by WOC-TV? A. It was. The semi-final game and the final game were both used on the sports program of WOC.

Q. Do you know how much film you exposed in each game; do you have any idea? A. Well, I can give you an idea. We shot, as I recall, about 400 feet on the semi-final game and 800 feet on the final game. However, that was edited, and it was not all used, naturally, on the show.

THE PRESIDING OFFICER: Do you remember who won?

THE WITNESS: I sure do -- the University of San Francisco.

BY MR. DOWD:

Q. You say WOC has used film you prepared on high school football? A. Yes.

[Tr. 2862]

Q. Has this been over a period of time? A. Quite a few years.

Q. That you have done this? A. Yes, we have for eight or nine years contracted high school football with East Moline, Moline, Rock Island High School, and also sold them equipment and worked with them very closely in the clinics that the football coaches use to make better football in the area.

We had a service available where we shot the games on Friday night, most of our high school games are played on Friday night. We shot the games and had a special service with Eastman Kodak on a processing service where they would have the film back in our hands by Sunday night or Monday morning so that the coach could review it.

Q. That would be a two or three-day time lag? A. Yes.

Q. And was that same film the film used by WOC-TV? A. Yes, their sports director would get permission from the coach. The film would be turned over to the coach, and the sports director from WOC on various occasions has gone to the school and gotten permission from the coach to use the film after the chalk-talk, or the coach used the film with his team. The coach isn't going to let the film get out of his hands until he completes his chalk-talk on it.

Q. Was that sound on film, or silent?

[Tr. 2863]

A. No, that was silent.

Q. Sixteen millimeter? A. Yes.

Q. In the conduct of your business in that 40 per cent area that you conducted camera operation, do you ever come in contact with camera enthusiasts? A. Every day.

Q. Do they ever participate in exhibitions? A. Yes.

Q. Do you know what their general attitude is with respect to their work or their hobby? A. They are very enthusiastic.

Q. Do you have any reason to believe that they would not be willing to show their film on television?

MR. DOBIN: I object.

THE PRESIDING OFFICER: I think it is objectionable. It has to be more definitely identified.

MR. DOBIN: It is the same mental business.

MR. DOWD: I said did he have any reason to believe they would not.

THE PRESIDING OFFICER: Not only that, but when you say exhibitions, without any qualification, I don't know whether you are talking about wardances, or what kind of an orgy you might have in mind.

MR. DOWD: I will try --

[Tr. 2864]

BY MR. DOWD:

Q. Do you know of your own knowledge whether exhibitions of photography and film are conducted in the Quad City area? A. Yes, they are.

Q. And what are the purposes of these exhibitions? A. It is interest among the different camera clubs. A fellow goes on vacation and takes pictures, and he is proud of them, and he wants everybody to see them, so he wants to show them.

Q. And this goes on on a more or less regular basis in the Quad City area? A. Yes, sir.

Q. Are there any contests conducted, photographic contests, in which camera fans in the Quad City area participate? A. Yes, the Tri-City Cineman and the Color Slide Club are constantly conducting contests, as well as the Camera Club in our local high school.

Q. Do you know of your own knowledge whether individuals participate in these contests? A. Yes, they buy film from us. We know that they participate.

Q. And did you use this information as to these activities in your decision as to the conduct of this monthly proposed schedule? A. Yes.

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[Tr. 2865]

RECROSS EXAMINATION

BY MR. MILLER:

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[Tr. 2866]

Q. When was the last time you were in Prophetstown? A. I believe this summer, when I was on a ride on a

[Tr. 2867]

Sunday afternoon.

Q. Now, it is my understanding that you made the circuit as a drug salesman in this territory back at what date? A. From 1941 to 1946.

Q. And you have made no circuits as a drug salesman through this territory since; is that correct? A. That is correct.

Q. Do you think the needs and interests of these areas might have changed since the last time you made the circuit? A. Yes.

* * * * *

[Tr. 2870]

BY MR. DOBIN:

Q. You mentioned LaSalle-Peru, did you not? A. Yes.

Q. Are those communities industrial or agricultural?

A. LaSalle-Peru is an industrial area, but it is completely surrounded with agricultural. It is a shopping area of an agricultural section, plus industry.

Q. Do you know if LaSalle-Peru is inside your coverage area?

A. No, I do not.

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[Tr. 2872]

HARRY McLAUGHLIN

was called as a witness, being first duly sworn, and testified as follows:

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[Tr. 2873]

CROSS EXAMINATION

BY MR. MILLER:

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[Tr. 2878]

Q. Was this subject discussed at the October 1957 meeting?

A. Yes, it was.

Q. Do you recall the substance of that discussion? A. To the best of my memory, this thing was brought up for discussion, and the opinion of the group was that it was just a matter of wasting time to go out, they had already made some contacts at that time. Mr. Schreiber, Mr. Stengle, who else, I don't remember that there was anyone else. They had talked to some ministers, I believe, and some school people, and came back and said they were only taking up time making them an offer of something that we are not sure we can give to them until we get a station, and when we do, that time is years off, I don't know how many, but we are in a lot better position to set up time, a lot of certain type of time for these activities with public groups, then when we get that station there will be no question about getting their cooperation.

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[Tr. 2897]

Q. Do you feel that the Arsenal and its work and position is important in your community there? A. Yes, I do.

Q. Do you feel that a television station in the Tri-City area should carry programming that would serve the needs of the Arsenal? A. Yes, I do.

Q. You think it should? A. Yes.

Q. Do you know whether anyone in Moline Television ever contacted the Rock Island Arsenal with respect to its programming needs? A. No, I don't.

Q. Do you know where Eledo, Illinois, is?

[Tr. 2898]

A. Yes, I do.

Q. Where is that in relation to the Quint-Cities? A. Oh, it is 18 or 20 miles south, a little west.

Q. Do you know whether or not it has a Ministerial Association? A. No, I don't.

Q. Do you know whether or not it has a Jewish synagogue?

A. No, I don't.

Q. Do you know whether or not it has a Mayor or City Manager form of government? A. No.

Q. Do you know whether there is a County Agent located there?

A. No.

Q. Where is Keithsburg, Illinois? A. Down on the River, south of Aledo.

Q. How far from the Quint-Cities? A. Oh, 30 miles.

Q. Do you know whether or not Keithsburg has an industrial development organization such as the Black Hawk Development Company?

A. No, I don't.

Q. Do you know whether or not there is a hospital in Keithsburg?

A. No, I don't.

[Tr. 2899]

Q. Do you know whether there is a high school there? A. No.

Q. Where is Macomb, Illinois, in relation to the Quint-Cities?

A. 70 miles south, straight south of Moline.

Q. Do you know whether or not there is an agricultural extension service in Macomb? A. I don't know whether I can bring this in. Macomb is a big town. I could tell you and be one hundred per cent sure, but I never talked to the people and I don't know them, but my answer has to be "no" for that reason. I go through Macomb 20 times a year, but I still have never contacted the agricultural agent down there. I do know these towns you are talking about pretty well.

Q. You don't know whether or not they have an agricultural agent? A. No, I don't.

THE PRESIDING OFFICER: Do you mean a county agricultural agent, or what do you mean?

MR. MILLER: It is the agricultural extension service, I believe that is a part of the Department of Agriculture.

THE WITNESS: No, I don't.

THE PRESIDING OFFICER: United States?

MR. MILLER: Yes.

BY MR. MILLER:

[Tr. 2900]

Q. Do you know whether Macomb has an Exchange Club?

A. No, I don't.

Q. Where do you reside, Mr. McLaughlin? A. At Moline, Illinois.

Q. Do you know who Dr. Herbert Hull is? A. No, I don't.

Q. Do you know who the Rock Island Superintendent of Schools is, Rock Island County? A. I am not -- no, I don't.

Q. Do you know who the Chief of Police of Davenport is?

A. That is one area that I am not familiar with, Chiefs of Police, no.

Q. Are you familiar with Monmouth, Illinois? A. Yes.

Q. Do you know who the President of Monmouth College is?

A. No, I don't.

Q. Do you know who J.D. Dixon is, of Monmouth? A. No.

Q. Do you know the Chief of the United States Army Corps of Engineers at the Rock Island Arsenal? A. That is something that is changing all the time, and they probably don't have the one out there now that they had when I left, so I don't know.

Q. Do you know who is president of the Community Chest of Rock Island?

[Tr. 2901]

A. No, I don't.

Q. Did you ever hear of the Kewanee, Illinois, Annual Hog Day?

A. No.

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[Tr. 2912]

BY MR. DOBIN:

Q. Mr. McLaughlin, do you remember the first time you participated in a discussion of the proposed programming of your corporation? A. I never discussed programming of our corporation.

Q. I mean now with the other stockholders. A. When I sat in and listened, these are committee assignments that I didn't get into, no.

* * * * *

[Tr. 2913]

Q. How long was it after the first time he talked to you that a group had been formed? A. I knew that the group was growing, I knew that they had

[Tr. 2914]

some right along. I talked to Coyle frequently during all that period, and always have.

* * * * *

[Tr. 2919]

Wednesday,
March 11, 1959

* * * * *

[Tr. 2921]

FRANCIS J. COYLE

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DOWD:

Q. Would you please state your name and address for the record, please? A. Francis Coyle, 3100 Coaltown Road, Moline, Illinois.

[Tr. 2921]

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Q. And are you chairman of the board, a director, and 12-1/2 per cent stockholder of Moline Television Corporation? A. I am.

MR. DOWD: Your witness.

CROSS EXAMINATION

BY MR. MILLER:

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[Tr. 2956]

Q. Do you know where Galva, Illinois, is? A. Yes.

Q. How far is that from the Quint-Cities? A. Galva is, oh, probably thirty miles.

Q. Do you know whether or not there is a Lion's Club in Galva?
A. I have no personal knowledge.

Q. Do you know whether or not there is an American Legion Chapter there?

[Tr. 2957]

A. I am quite sure there is.

Q. Do you know, sir? A. I don't know of my own knowledge, no.

Q. Do you know whether there is an Army installation near Galva?
A. There is none to my knowledge.

Q. Do you know whether Galva has a junior high school? A. No, I don't.

Q. How far is Galesburg, Illinois, from Quint-Cities? A. Galesburg is -- Moline is the closest to Galesburg of the Quint-Cities, and it is about 40 miles.

Q. Do you know whether or not there is a Lutheran Church School in Galesburg? A. Knox College is in Galesburg.

Q. Is that a Lutheran School? A. No.

Q. Do you know whether Galesburg has an Exchange Club?

THE PRESIDING OFFICER: John Knox wouldn't like that.

THE WITNESS: I assume there is.

BY MR. MILLER:

Q. Do you know, sir? A. No, but Galesburg is a pretty big city and I assume they have.

Q. You assume, but you don't know of your own knowledge? A. I don't know.

[Tr. 2958]

Q. Do you know whether there is a County Agricultural Agent located there? A. I assume there is, but I don't know.

Q. Where is Sterling, Illinois, in relation to the Quint-Cities?
A. It is about 55 miles.

Q. Do you know whether there is a County Agricultural Agent located there? A. Not of my own knowledge, no.

Q. Do you know whether or not there is a Jewish Synagogue there?
A. No, I don't know.

Q. A Menonite Church? A. I don't know.

Q. Do you know who the Director of Civil Defense of Scott County, Iowa, is? A. I do not.

Q. Do you know who the president of the Rock Island Ministerial Alliance is? A. Well, it changes from time to time. My guess is that Reverend Carter is now with that, I don't know.

Q. You mentioned Knox College. Do you know who the president of Knox College is? A. No, I do not. Knox College is a combination now of Knox and Lombard. Lombard was also a college in Galesburg,

[Tr. 2959]

and they merged with Knox.

Q. Do you know who the superintendent of Scott County Schools is?
A. I do not.

Q. Do you know Mr. Selby Ballantyne? A. I do not.

[Tr. 2959]

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Q. You don't know what he does? A. No.

Q. Do you know Mr. Verner E. Strand -- Reverend Strand? A. No.

Q. Do you know Mrs. Brandon Dudley? A. No.

Q. Do you know what she does? A. No.

Q. Did you ever hear of the Annual Watermelon Festival at Muscatine, Iowa? A. I have, yes.

Q. Do you know how many people that attracts? A. Well, it is very popular, so I imagine they are in the thousands.

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[Tr. 2980]

[CROSS-EXAMINATION]

BY MR. BILGER:

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Q. Did you have an opportunity to review the program schedule before it was placed in final form in your exhibits? A. No, I don't believe I did.

* * * *

[Tr. 2987]

[CROSS-EXAMINATION]

BY MR. DOBIN:

* * * *

[Tr. 2992]

Q. Now, will you tell me, if you can remember, the first time you heard a discussion of the proposed programming of your applicant corporation? A. It was one of those discussion periods when we had a meeting.

Q. Well, was it before the application was filed or after? A. I suppose it was before it was filed.

Q. Have you had discussions about the programming of the station subsequent to that time? A. I imagine we have. I can't pick out any date, but I imagine.

Q. Do you know whether you have ever made any changes in your original program proposal? A. Yes, we have.

Q. These were discussed at a meeting of the Board?

[Tr. 2993]

A. Well, they were discussed, whether it was a meeting of the Board or a meeting of the committees, I don't recall.

Q. Do you recall how these changes came about? A. No, I don't.

Q. Do you recall what these changes were? A. No, I don't.

Q. Did anyone explain to you why you were making the changes?

A. No.

Q. In effect you heard changes discussed, but no one really told you what they were about? A. Yes, that is right.

Q. That is about right? A. That is about right, sir.

* * * * *

[Tr. 3000]

Q. Let me ask you, then, do you think it is desirable, asking you the question as chairman of the board, or will you give me your personal opinion to have live religious programs on Sunday morning? A. Well, for people who couldn't attend church, or couldn't attend Mass, I would think it would be a fine thing.

Q. If the station couldn't see fit to have any, let's say before noon, would you think it was desirable to have some, let's say, between noon and six o'clock, live religious programs on Sunday? A. Would you think it would be advisable?

Q. That is right. A. Yes.

Q. Now, do you know what your applicant corporation proposes with

respect to live religious programs on Sunday? A. I know that we have religious programs on Sunday, that one, the Christophers at noon, then we have two in the evening, I know that. I know we have the programs.

[Tr. 3001]

Q. Would you agree with me if I said that there was no live religious programming on Sunday on your station until, I believe, 9:15 in the evening? A. If that is what you say, I have no objection.

Q. Do you understand that to be the case?

MR. DOWD: That is not the case, Mr. Dobin, if you are trying to entrap the witness, all right, but I think if you are trying to state the record, there is a 6:15 p.m. evening prayer service.

MR. DOBIN: You are right.

THE PRESIDING OFFICER: Off the record.

(Discussion off the record.)

THE PRESIDING OFFICER: On the record.

BY MR. DOBIN:

Q. Do you know whether it is the case that your applicant proposes no live religious programming on Sunday until 6:15 in the evening?

A. That is correct.

Q. Now, did you participate in the discussions which led to that program proposal? A. I suppose I did, I mean the discussions were all over a period of time, and I took part --

Q. Do you recall that you ever told anybody you thought it was a good idea to have live religious programming in the morning on Sunday?

[Tr. 3002]

A. No.

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[Tr. 3014]

REDIRECT EXAMINATION

BY MR. DOWD:

* * * * *

[Tr. 3016]

Q. Well, now, at or about this time had you had inquiries from anyone else or any other group as to your personal participation in a television station? A. Yes.

Q. Were there other applicants in this proceeding? A. Yes, there is three of them in this proceeding that contacted me and asked me to join them.

THE PRESIDING OFFICER: Three other applicants, or three other people?

THE WITNESS: Three other people representing different groups of applicants.

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[Tr. 3018]

[BY MR. DOWD:]

Q. Now, a question was asked with reference to the program descriptions contained here in Exhibit 5. Were those descriptions ever discussed or submitted to any meeting at which you were present? A. Yes.

Q. Did you hear any discussion of those descriptions? A. Yes.

Q. Did you participate in any meeting in which they were approved?
A. Yes.

MR. DOWD: I have no further questions.

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[Tr. 3020]

86

[Tr. 3020]

FRANK P. SCHREIBER

was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DOWD:

Q. Would you please state your name and address for the record, please? A. Frank P. Schreiber, Riverside, Illinois.

Q. Are you the Mr. Schreiber who holds the office of president and are now a ten per cent stockholder of Moline Television Corporation?

A. I am.

* * * * *

[Tr. 3021]

CROSS EXAMINATION

BY MR. MILLER:

* * * * *

[Tr. 3027]

Q. Mr. Schreiber, according to the information supplied by your counsel, you held the following positions with WGN between the following dates, and I would like to read these and see if this is your understanding.

The public relations director of WGN from 1931 to 1940, is that correct? A. That is correct.

Q. You were general manager of WGN-AM and TV, from 1941 to

[Tr. 3028]

A. That is incorrect. I held that position until June 8, 1945.

Q. But you became general manager in 1941, is that correct?

A. As I recall it, yes.

Q. You were vice president of WGN, Inc., from 1954 to 1955?

A. That was 1955 to 1956 -- 1955 and 1956.

Q. Would that be until June? A. Until June 8, when I resigned.

Q. And you were treasurer from 1947 to what date? A. June 8, 1956.

Q. And you were director from 1947 to what date? A. June 8, 1956.

Q. This information also indicates that you were a director of WPIX, Inc. A. That is correct.

Q. From October, 1948, to October, 1956, is that correct? A. That is correct.

Q. And that you were a director of Mutual Broadcasting System from 1950 to 1956, is that correct? A. That is correct.

MR. DOWD: I believe, Mr. Miller, on that point, didn't we secure some amended date?

MR. MILLER: I believe you are right.

MR. DOWD: 1949, I think it was. I don't know as it is

[Tr. 3029]

a material point, but I do believe I did circulate a letter to counsel indicating the record shows '49.

MR. MILLER: I think you are right, that is with respect to Mutual?

MR. DOWD: Yes.

MR. MILLER: I don't think I have that correction with me.

THE PRESIDING OFFICER: By director, do you mean a member of the board of directors?

MR. DOWD: A member of the board of directors of Mutual Broadcasting Company from 1949 to --

THE PRESIDING OFFICER: Well, heretofore in this proceeding the word "director" has been brought up in another connotation.

* * * * *

BY MR. MILLER:

Q. Then it is your testimony that you left WGN in 1956, is that correct? A. That is right, June 8, 1956.

Q. Now, what was the occasion of your leaving there? A. Very simple. Whether I resigned or didn't resign, I left at the request of the management.

Q. You left at the request of the management? A. Yes, I resigned at the request of the president.

Q. Had you had a disagreement with him? A. I had.

Q. And what was that about?

[Tr. 3030]

MR. DOWD: I think it is a collateral issue, Mr. Examiner. He said he left because he had a disagreement. Normally general managers have no alternative if the president disagrees with them. I don't think the subject matter of the disagreement is relevant to this proceeding.

THE PRESIDING OFFICER: I have no idea, I don't know how to rule on a thing like that.

MR. DOWD: I will withdraw it, let him go ahead. I don't think it is privy. I will withdraw the objection.

THE WITNESS: There was never any reason expressed for the disagreement. We agreed that he would be happier if he had somebody running his operation, and I agreed that I could get along without it, not as well as I had before, but I could, and I left. I resigned, gave a letter of resignation, a simple letter form of resignation telling him I was resigning as vice president and director and member of the board of directors of WGN, Inc., and wishing him well for the future, and it was that simple.

BY MR. MILLER:

Q. Were you in disagreement on matters of policy as to how the station should be operated? A. Yes.

Q. On what policies were you in disagreement? A. Well, it concerned mainly the staffing of the station.

* * * * *

[Tr. 3031]

Q. Was staffing the only policy point on which he disagreed?

MR. DOWD: Objection.

THE PRESIDING OFFICER: No, I will let it go.

MR. DOWD: I would like to have the relevance of the question.

[Tr. 3032]

MR. MILLER: I want to find out where the basis of this disagreement which resulted in his leaving, I think it is relevant as to his background in the broadcasting industry.

THE PRESIDING OFFICER: I think so, I think it is all right. You have your exception.

THE WITNESS: Yes.

BY MR. MILLER:

Q. I believe my question was what other -- A. I understood your question was staff --

THE PRESIDING OFFICER: Just a minute, what is the question?
(Question read.)

THE WITNESS: And my answer was "yes".

BY MR. MILLER:

Q. Now, after you left WGN, you went to work for the International Brotherhood of Electrical Workers, is that correct? A. Yes, that was in September, 1957.

Q. September of 19 -- A. 1957, late August or September of 1957.

MR. DOWD: Is that '56 or '57?

THE WITNESS: I am sorry, I am wrong, it was in '56, late August or early September of '56.

BY MR. MILLER:

Q. And what position did you hold with the Brotherhood of Electrical Workers? A. Well, I was known as the assistant to the president.

[Tr. 3033]

THE PRESIDING OFFICER: Who was the president then?

THE WITNESS: Frank Darling -- M. Frank Darling.

BY MR. MILLER:

Q. And was that assistant to the president of the Local 1031?

A. Of Local 1031.

Q. And how long did you hold that position? A. I was there until the end of January, 1957.

Q. In other words, from September of '56 to January of '57?

A. That is right.

Q. And where did you go from there, sir? A. I bought a business that I own.

Q. Is that the restaurant business? A. That is right.

Q. Now, when was it that you became interested in the Hillside Savings and Loan Association? A. March of 1957.

Q. Was this after you had acquired the restaurant? A. No, I didn't acquire the restaurant until May of 1957.

Q. So prior to getting the restaurant, you went with the Hillside Savings and Loan Association? A. That is right.

* * * * *

[Tr. 3034]

Q. Now, did you attempt to go back into broadcasting during this period? A. No.

THE PRESIDING OFFICER: I don't understand that question.

MR. MILLER: Did you attempt to go back into broadcasting?

THE PRESIDING OFFICER: Oh, I thought you said "intend."

BY MR. MILLER:

Q. Did you have any interest in going back into broadcasting during this period? A. Yes.

Q. Did you make any effort to? A. No.

Q. How long, then, did you work for the Hillside Savings and Loan

Association? A. Well, I was a vice president and a member of the board of directors for approximately a year.

Q. And then did you sever your relations with that company?

[Tr. 3035]

A. I did.

Q. Was this a voluntary termination? A. Yes, it was.

Q. In the meantime, you went into the restaurant business in Forest Park, Illinois, correct? A. Correct.

* * * * *

[Tr. 3036]

Q. Does your wife have a legal interest in the restaurant? A. Yes, she does.

Q. What is that interest? A. I think the legal position is she is a partner.

Q. Is it a 50-50 partnership? A. I presume so.

Q. Do you have a written partnership agreement? A. No.

Q. Just a verbal understanding? A. That is all.

* * * * *

[Tr. 3037]

Q. Mr. Schreiber, you have heard the testimony here of the other witnesses from Moline Television about the matter of making program contacts? A. Yes.

Q. Did you at any time suggest that it would be desirable to make program contacts? A. Yes.

Q. When was this? A. In the fall of 1957, early fall.

Q. To whom did you make this recommendation or suggestion?

A. I suggested it to -- I first suggested it to Mr. Stengel, and said it would probably be desirable, it would undoubtedly be desirable for him

to introduce me to a number of people in the area with the idea that they would be able -- that those organizations would be able to furnish programming and to acquaint me with the area.

Q. And that was to acquaint you with needs and interests of the area in terms of making up a program schedule? A. Yes.

Q. And did you thereafter make these contacts? A. Made some of them.

Q. Now, what contacts did you make? A. Mr. Stengel visited several different places with me. We visited, I presume, a dozen or more.

[Tr. 3038]

Q. What sort of places? A. Colleges, a religious organization, public schools and a medical association.

Q. Which public school systems did you visit? A. We visited the Superintendent of the Rock Island Public Schools, and the Moline Public Schools and the East Moline Public Schools.

Q. Which colleges did you contact? A. Augustana College, St. Ambrose College and Mary Crest College.

Q. Did you contact the Rabbinical Association? A. No, sir.

Q. Do you know whether there is one in the area? A. No, sir.

Q. Now, when were these contacts completed? A. Some time in September of 1957.

Q. When was the next time that you recall this subject of making contacts was discussed? A. Well, we discussed it among two or three of us, I think Mr. Gilman, Mr. Stengel, Mr. Parson, from a programming standpoint, and then I reported to a larger group of our stockholders after the organization meeting.

Q. That was the end of October, 1957? A. Yes, it was in October of 1957. I don't know whether it was the end of October. I think that the original

[Tr. 3039]

get-together of the group of these gentlemen was in the early part of October, as I recall.

Q. Now, was this matter discussed in the summer of 1958, to your recollection? A. What matter, Mr. Miller?

Q. This matter of not making contacts. A. No, because we had all but completed -- in the summer of 1958, we were in the process of making up our presentation.

Q. Wasn't it discussed at that time at all? A. Oh, it might have been discussed informally, but our pattern was set.

Q. Was there any discussion between the October, 1957, meeting and the summer of '58 by renewing contacts? A. Yes, there was some discussion about it.

Q. Can you recall when that was? A. It came after we had heard from Mr. Earl Hanson, had a letter from Mr. Hanson.

Q. And was that the subject of making further educational contacts as a result of Mr. Hanson's letter? A. No, we decided not to make any further educational contacts, and we decided that in the fall of '57. In '58 there came a letter, as I recall it, from Earl Hanson, in which he stated his position in regard to educational programming. I think that is a part of the record.

Q. Well, did you have any discussions about the

[Tr. 3040]

possibility of making further religious contacts between the end of October of '57 and the summer of '58? A. Yes, we did that when we appointed the religious committee.

Q. About making program contacts? A. No, we talked about programming religious -- the programming of religious and how it would be handled when we organized the religious committee.

Q. Did you discuss making further religious contacts at that time?

A. No, except to say that if and when we were given the grant, the religious committee would function in that respect.

* * * * *

[Tr. 3041]

Q. It was my understanding you testified with respect to -- in answer to my question on religious contacts that at the time your religious committee was appointed, you discussed religious programming?

A. That is right.

Q. Now, did you at that time discuss the matter of making further religious contacts, contacts with religious organizations?

[Tr. 3042]

A. No, we --

THE PRESIDING OFFICER: Wait a minute. Do you mean with the idea in mind of formulating programs on the basis thereof, is that the intent of your question?

MR. MILLER: That would be assumed in the question, and it is broader than that, I think, that the contacts may be used for formulating descriptions as well as the schedule.

THE PRESIDING OFFICER: I understand the witness' testimony up to now to mean they arrived at a certain point and said we will defer everything until after we get on the air, and then we will go out and make our contacts and, if necessary, change, expand, or do anything they want in accordance with those contacts that are to be made if they get on the air.

Now, do your questions go that far in the future, or do you mean did the applicant make contacts with respect to the programs that are before the Commission now?

MR. MILLER: That is the point of my question.

THE PRESIDING OFFICER: The latter?

MR. MILLER: The latter.

THE PRESIDING OFFICER: All right.

THE WITNESS: No, we did not.

* * * * *

[Tr. 3051]

BY MR. MILLER:

Q. Mr. Schreiber, I show you the Commission's license file, WGN-AM, and I direct your attention to the application for

[Tr. 3052]

renewal of license of WGN, File No. B-45R60, which is indicated by the Commission's stamp as received, Federal Communications Commission, December 12, 1941, is that correct, sir? A. It looks like it, yes -- yes, 1941.

Q. Now, were you station manager at this time, sir?

MR. DOWD: Are you just testing the witness' recollection, or do you want him to look at the application?

THE WITNESS: May I look at the date of the application, or who signed the application?

BY MR. MILLER:

Q. It is signed by Antrim. A. E. M. Antrim, assistant secretary.

Q. Were you the station manager in December of 1941? A. I don't think this would indicate that I was.

Q. What would this indicate your position to be, what was your position in December of '41? A. I believe that was the period when I was acting under the title of coordinator. The specific date says general manager, '41 to '56.

Q. That was when you were acting as coordinator? A. Yes, and that license --

Q. I would direct your attention to Exhibit D to that application and ask you whether or not it is correct this shows Frank Schreiber's position, coordinator? A. That is right, that is exactly what it says.

[Tr. 3053]

Q. What were your duties as coordinator? A. As coordinator, I had jurisdiction over all departments except sales, operation of all departments except sales and engineering, and I was to coordinate the operation of all the departments with sales and with engineering.

Q. This was different from being station manager? A. Yes, it was.

Q. Now, I would then direct your attention to the application for renewal designated as File No. B4R560 for WGN, and would direct your attention to the stamp on this application showing it received in the license division, December 3, 1943, is that correct? A. Yes, sir.

MR. DOWD: I would like to ask now for an explanation of this line of questioning, in other words whether it is merely to confirm some dates of when he was employed. I assume that obviously since his general testimony is that he became manager in '41 is in evidence, this must be leading up to some basis for re-trying the WGN program performance since 1941, and if that is the case, then I want to interpose an objection right at this time. If it has no other -- if that is not the purpose of it, then I would like to have Mr. Miller state it.

MR. MILLER: I am not intending to re-try WGN program performance in 1941, or 1943. I am trying to find out just what this man did at this station. He said he was station manager, now he says he was coordinator, and I want to know what he did there.

[Tr. 3054]

MR. DOWD: All right.

BY MR. MILLER:

Q. This application in 1943, sir, I will direct your attention to Exhibit B thereto, and ask whether the first line does not indicate Frank B. Schreiber's position and duties, coordinator, is that right? A. It does, sir.

Q. So you were not yet station manager at this time, is that correct? A. Not so designated, no.

Q. I now direct your attention to the application for renewal of

license of WGN in the Commission's files, this one doesn't seem to have a file number. A. 1946.

Q. Does this indicate it was received in the License Division September 12, 1946? A. Right.

THE PRESIDING OFFICER: Just a moment, gentlemen.

If the sole purpose of this is to determine what the man's duties were, can't you get together and stipulate?

MR. DOWD: The direct testimony of this witness, states, Mr. Examiner, on page 1 of Exhibit 2-A, that beginning in 1941 'I served in various executive capacities with WGN, Inc., the licensee of WGN-AM and TV. I was general manager of

[Tr. 3055]

WGN-AM-TV for about 15 years."

In other words, he states he was general manager for about 15 years in his direct testimony.

Now, I think Mr. Miller, if he wanted a breakdown on those duties, could ask Mr. Schreiber what the other executive duties were. Any attempt now to indicate there was a misrepresentation here, I don't know, but he hasn't asked the man to designate what his duties were or what capacities he held.

MR. MILLER: I earlier asked Mr. Schreiber on the basis of the earlier information you supplied what his positions were, and he testified that he was station manager from 1941, on, and now these indicate that he was coordinator, and he now testifies he was coordinator.

MR. DOWD: The only thing I know, Mr. Miller, is that you had available to you Exhibit 2-A, I furnished you that information. You asked a question, and if you are trying to impeach the witness, I would like to know, or if you are just asking for information I think you can get it.

His direct testimony said he was general manager for about 15 years, which would make it, as I understand, from about 1945 or '44, for about 15 years. That is what his direct testimony in this case was.

MR. MILLER: Mr. Examiner, this is the last file on this point that I am referring to, and I think this will establish the date when he became station manager.

[Tr. 3056]

THE PRESIDING OFFICER: All right.

BY MR. MILLER:

Q. In the file that we are referring to, Mr. Schreiber, received in 1946 in the License Division, I refer you to Exhibit G of that application and will ask what position it does show after your name? A. Station manager.

Q. Does that refresh your recollection as to when you became station manager of WGN? A. No, not any more than the previous statement.

Q. Now, what were your duties as coordinator, again, sir? A. I was in charge of the operation of all departments of the station with the exception of the sales department and the engineering department, and, of course, the auditing department, which has never been under the station manager, internal audit.

Q. Did this include programming? A. It included programming, production, public relations, and so forth, and charged with the duty of coordinating the operation of the sales department and the engineering department with all of the other departments.

* * * * *

[Tr. 3058]

Q. I refer you now, sir, to WGN-TV license file of the Commission, file No. BPCT-32, and ask you whether or not that is the original application of WGN, Inc.? A. As far as I know, that is correct.

Q. For a construction permit, and will you state for the record the date on which that was received? A. The date is January 25, 1944.

Q. That shows the date on which it was received in the Office of the Secretary of the Commission, sir. A. I presume that is what it is.

Q. I refer you to page 40 of that application, the list of exhibit, to Exhibit H-2 and L, H-2 being the proposed program

[Tr. 3059]

schedule, and I will ask you who is indicated as having prepared those exhibits. A. The proposed program staff, H-2, proposed program schedule L, prepared by Frank Schreiber.

Q. What is the official title? A. Broadcast manager.

Q. Now, referring to Exhibit L to the application, sir, there is a breakdown of the percentage of time to be devoted to different types of programming. Would you read into the record, sir, the time proposed to be devoted to educational programming?

* * * * *

[Tr. 3065]

Q. I will again refer you, sir, to Exhibit L of that document and will ask you to state what is shown as to the percentage of total time proposed to be devoted to educational programming? A. 7.14.

Q. And religious --

MR. DOWD: Would you give the hours, too?

MR. DOBIN: Is that hours or percentage?

MR. DOWD: Percentage.

THE PRESIDING OFFICER: Was the Commission's definition the same then as it is now?

THE WITNESS: No, they were not, sir. The periods per week,

[Tr. 3066]

educational, periods per week, 8. Length of period, 15 minutes. Total time per week, 2 hours. Percentage of total time, 7.14.

Religious service, periods per week, one. Length of period, 60 minutes. Total time per week, one hour. Percentage of total time, 3.57.

Agricultural. Periods per week, 6. Length of period, 15 minutes.
Total time per week, one and a half hours. Percentage of total time, 5.36.

* * * * *

[Tr. 3068]

BY MR. MILLER:

Q. I show you again the Commission's file for WGN-TV File No. 82, which is entitled Television Broadcast License, and direct your attention to the date. What is that date? A. The 4th day of January, 1951.

Q. And does it indicate on here the license period? A. The 4th day of January, 1951, ending February 1, 1952.

Q. Would that have been the first license? A. So far as I know, that is correct.

Q. I direct your attention now, sir, to the Commission's license file BRCT-59, which is entitled "Application for renewal of broadcast station license", is that correct? A. Yes, sir.

Q. Can you give me the date that application was signed? A. The 23rd day of October, 1951.

Q. And who signed the application? A. I signed the application as treasurer.

Q. And does this also indicate, sir, that the exhibits under Section 4 of the application were prepared under your direction? A. That is correct.

Q. In what capacity? A. The title, office title, broadcast manager.

[Tr. 3069]

Q. I will direct your attention to Section 4, page 1, of this application, and ask you to read into the record the percentage of time stated as having been devoted to religious programming for the composite week involved? A. None.

Q. How about agricultural programming? A. None.

Q. Educational? A. Two per cent.

Q. Discussion? A. One per cent.

Q. Directing your attention to page 2 of Section 4, Question 4-A, which calls for you to state the percentage of time which was devoted to each of the following classes of programs during the composite week, and thereafter it contains a program log analysis, I will ask you to state what this shows with respect to the total amount of commercial time during the composite week? A. 84.

Q. And total sustaining? A. 16.

Q. What about the number of non-commercial spot announcements?
A. 20.

Q. Referring to paragraph 4-B, this requests you to show

[Tr. 3070]

in the table below the percentage of time proposed to be devoted to each of the following classes of programs during the proposed typical week of operation. Would you read the response to that question? A. "No change is presently planned. See Exhibit 4-A."

Q. Now, going back to page 1 of Section 4, Question 1-B, this calls for stating the percentage of time to be devoted to each of the following types of programs for a proposed typical week of operation under the authorization requested, and I will ask you to state what this analysis shows as proposed to be devoted to religious programs? A. None.

Q. Agricultural? A. None.

Q. Discussion programs? A. One per cent.

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[Tr. 3072]

Thursday, March 12, 1959

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[Tr. 3076]

MR. MILLER: Mr. Examiner, at the conclusion of yesterday's session, we had read into the record certain program percentages on past performance, and so on, of WGN-TV from its renewal of November 2, 1951. I would like to ask the Examiner to take official notice of a letter dated February 18, 1952, from T. V. Slowie, Secretary of the F. C.C., to WGN, Inc., appearing in WGN-TV license file No. 2, and I will read the first paragraph just for identification --

MR. DOWD: Before you spend all that time reading it into the record, I would like to know for what purpose it is being offered.

MR. MILLER: For what purpose?

MR. DOWD: Yes.

MR. MILLER: Well, I will have to state what the letter says, first. It is a letter from the Commission deferring action on the application for renewal of license for the reason that the application discloses that no time was devoted to religious programs during the 1951 composite week, and, further, that under the renewal application, no time was proposed to be devoted in the future. I think this goes to the question of Mr. Schreiber's background and experience in the management of this station, he was in charge of their programming, and he prepared the renewal.

* * * * *

[Tr. 3082]

MR. MILLER: He filed the renewal application, since it is an officer, and indicates he was responsible for the programming as broadcast manager. When the question was raised, he also signed the letter of

explanation filed in March of 1952, submitted as an amendment to this application.

THE PRESIDING OFFICER: Was that letter considered satisfactory by the Commission?

MR. MILLER: There is no question, Mr. Examiner, the license was renewed. I am not contending ---

THE PRESIDING OFFICER: In other words, they didn't have to amend the application to show religion?

[Tr. 3083]

MR. MILLER: Well, they --

MR. DOWD: I think the reply speaks for itself.

THE PRESIDING OFFICER: I wondered if WGN won its point.

MR. DOWD: They did not amend the application. They merely pointed out that the composite week which carried no religion, and they didn't represent the next composite week would carry religion, but in fact during the preceding period of time religious programs had been carried by the station.

MR. MILLER: Have you read their reply, Mr. Dowd?

MR. DOWD: Yes.

MR. MILLER: Accordingly, the application for renewal is hereby amended so that the percentages for the two following program classifications shown in the answer to paragraph 2(b), Part 1, will read as follows: "Entertainment 66-1/4 per cent, religious, 1-3/4 per cent.

MR. DOWD: I stand corrected. On the agriculture, did they make any change? I don't recall.

MR. MILLER: I don't think they did.

THE PRESIDING OFFICER: Well, I will take notice of it.
Go on.

BY MR. SCHREIBER: [Sic]

Q. I refer you now, Mr. Schreiber, to an application for renewal of WGN-TV, BRCT-59, in the Commission's files, and refer you to page 2, and ask you who signed this application? A. I signed the application.

[Tr. 3084]

Q. In what capacity? A. As treasurer.

Q. And what is the date of the application? A. The 28th day of August, 1952.

Q. Will you refer to Section 4 of this application, and on page 1, Question 2-B, which is to state the percentage of time to be devoted to the following types of programs for a proposed typical week of operation, and I will ask you to state what this shows as to the amount of time to be devoted to religious programming? A. Three per cent.

Q. Educational programming? A. Three per cent.

Q. I will now call your attention to an application for renewal again designated as BRCT-59, filed in behalf of WGN, Inc., and refer you to page 2 and ask you who signed this application? A. I signed the application as treasurer.

Q. And what is the date of this application? A. August 27, 1953.

Q. And I direct your attention to the list of exhibits prepared in connection with Section 4 of the application and ask you what name appears here as the officer, employee, by whom or under whose direction the exhibits were prepared? A. My name, sir.

[Tr. 3085]

MR. DOWD: Well, Mr. Miller in order not to go back why don't you state what it does indicate? It says the officer under whose direction the exhibits were prepared.

MR. MILLER: I said by whom or under whose direction?

MR. DOWD: It doesn't state by whom, it indicates which category it was.

BY MR. MILLER:

Q. Does it indicate this was prepared by you or under your direction?
A. Under my direction.

Q. In what capacity? A. As broadcast manager.

Q. And referring to Section 4, page 1, Question 2-A, will you state --

this is the section stating for the composite week the percentage of time which was devoted to each of the following types of programs for the preceding composite week, and will you state what this shows with respect to religious programs? A. 1.4 per cent.

Q. And with respect to educational program? A. Educational, 1.5 per cent.

MR. DOWD: May I ask, Mr. Miller, whether that is the only answer which is indicated opposite those categories?

MR. MILLER: There is an asterisk that says "See statement in Exhibit 4 regarding these program classifications."

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[Tr. 3087]

MR. MILLER: Mr. Examiner, I would request that you also take official notice of a letter dated October 21, 1954, to William P. Massing, Acting Secretary of the Commission, to WGN, Inc., which again defers action on the renewal of license of WGN, Inc., on the ground that the applicant is indicated as being insolvent --

THE PRESIDING OFFICER: Being what?

MR. MILLER: Insolvent.

THE PRESIDING OFFICER: Insolvent?

MR. MILLER: Insolvent.

MR. DOWD: This shows how perfectly stupid this line of questioning is. First of all, I think we can establish without any question that the Chicago Tribune, the parent corporation, was never insolvent, and we can go into the financial question, but certainly I don't think it has any relevancy with respect to the broadcast experience and background of this witness.

[Tr. 3088]

MR. MILLER: Mr. Examiner, I am suggesting that you take official notice of this letter only in connection with the representation of Mr.

Schreiber in his employment contract that is already in evidence in this proceeding that he at no time had any difficulty in securing renewal of license for the stations which he managed.

MR. DOWD: Is Mr. Miller implying that because the Commission writes and asks for an explanation of an item that appears in an application, that this is something that "causes difficulty in securing a renewal of application"?

MR. MILLER: They deferred action on his renewal until this matter was clarified.

THE PRESIDING OFFICER: I will take notice of it.

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BY MR. MILLER:

Q. Mr. Schreiber, turning to another matter, can you tell me who prepared the program schedule that appears in Exhibit 4 of your direct case? A. The program schedule appearing in Exhibit 4 was prepared by Mr. Gilman, Mr. Parson and myself.

Q. When was this done -- when was the schedule originally prepared, I should ask? A. The schedule was originally prepared for filing with the original application in 1957.

[Tr. 3089]

Q. Do you recall when in 1957 the schedule was prepared?

A. It was prepared during the fall of 1957.

Q. Now, can you pinpoint the time in the fall of '57 when this was done? A. It was prepared over a period of time. I imagine that it was September or October.

Q. Do you recall when it was completed? A. Probably in the latter part of October.

Q. Where was it prepared, sir? A. It was prepared in two locations. We worked on it in Chicago and we worked on it in Rock Island.

Q. And what part did you take in the preparation? A. I was advising Mr. Gilman as to types of programs and my past experience in preparation of such programs.

Q. And what part did Mr. Gilman take in the preparation?

A. Mr. Gilman provided local knowledge of the possibility of being able to produce such programs, and in making offer telling us whether or not in his opinion such programs were feasible in the market.

Q. How about Mr. Parson, what did he do? A. Mr. Parson had general knowledge of television programming.

Q. Was this schedule discussed with any of the other stockholders other than Mr. Gilman and Mr. Parson during that period?

[Tr. 3090]

A. Oh, yes, it certainly was.

Q. At the time you prepared the schedule, itself, had you at that point prepared any program descriptions or did they follow later?

A. Well, we had prepared some program descriptions.

Q. Now, in relation to your contacts that were made, when were the dozen or so contacts made? A. In September of 1957.

Q. Am I right that you and Mr. Stengel are the only two stockholders who were engaged in the process of making contacts? A. With the exception of Judge Coyle's contact with the Monsignor, and the request I made to Mr. Agnew to put me in touch with the medical group head, and the chief man of the medical group in the area. I don't believe Mr. Agnew, however, called that gentleman. He just gave me his name.

Q. I think the record is clear now, is it not, that after October, 1957, you made no further contacts, either you or anyone else in Moline Television Corporation, to your knowledge? A. We made no new contacts for the purpose of programming.

Q. Now, referring to Exhibit 5, the program descriptions, did you write these, sir? A. Mr. Gilman wrote those, assisted by Mr. Parson and assisted me and counsel.

Q. You mean Mr. Gilman did the actual drafting of them,

[Tr. 3091]

is that correct? A. As I recall it, he did.

Q. And what did you do, make verbal suggestions? A. Yes, we worked together. We sat side by side and talked about them, and there were times when Mr. Gilman worked alone.

* * * * *

[Tr. 3092]

Q. Did you have a session in Chicago where you and Mr. Parson and Mr. Gilman sat down and worked on these and then another session in Rock Island where the three of you sat down and worked on them?

A. Yes, that is right. I spent a lot of time in Rock Island working with Mr. Gilman.

Q. Were any of the other stockholders present at these sessions when you were working on these? A. No, I don't believe they were present. Mr. Stengel might have been in and out in Rock Island, but not in Chicago.

Q. Did Mr. Thomas render any assistance on these? A. No, sir.

Q. Now, referring to Exhibit 3, your statement of policy, principles and practice, who prepared this statement, sir? A. This statement was prepared by the secretary of the corporation.

Q. Who would that be? A. Mr. Gilman.

Q. Did you take any part in the preparation? A. I certainly discussed it, yes.

[Tr. 3093]

Q. Are you responsible for any of the actual language and verbiage in this exhibit? A. Undoubtedly.

Q. You actually wrote part of it? A. No, I was responsible for some of the language. I did not physically put pen to paper and write it.

Q. Did Mr. Parson take part in this preparation? A. A great number of our stockholders and directors, in fact practically all of them took part in preparing this.

MR. KITTNER: Mr. Examiner, may I either ask that the response

be stricken, or it be continued so that it is responsive. The question, as I understand it, was whether Mr. Parson took part. I don't think that has been answered.

THE WITNESS: Yes, Mr. Parson took part.

BY MR. MILLER:

Q. When was this prepared, Mr. Schreiber? A. This was prepared also in the spring or early summer of 1958.

Q. And where was it prepared? A. Primarily in Rock Island.

Q. How many visits did you make to the Quint-Cities between the beginning of 1957 and the fall of 1958? Do you recall? A. That is a difficult question. I imagine I made at least 15 visits.

[Tr. 3094]

Q. Fifteen? A. Yes.

Q. Were these extended stays? A. Some of them were.

Q. Did you attend the formal meetings of the stockholders that were held in the Quint-Cities? A. Yes.

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[Tr. 3095]

Q. On page 12 of the same exhibit, line 8 -- rather lines 6 to 8 -- it says "Production facilities for a full service, including choral groups, will be made available." A. Yes, sir.

Q. Do you mean the station will make these groups available?

A. Production facilities to handle full service and choral groups.

Q. Production facilities to handle? A. Yes, sir, to handle the production of any choral

[Tr. 3096]

numbers that might be furnished by the church.

Q. You didn't contact any churches to find out if they would make such choral groups available? A. We contacted Reverend Clark, head of the Protestant Church Group of the area.

Q. When was this contact? A. That was in September.

Q. Of what year? A. 1957.

Q. And at 9 to 11 of this exhibit, you referred to the selection and frequency of rotation being governed by the wishes of the various churches.

How many churches have you contacted to determine their wishes in regard to the frequency of rotation? A. We didn't contact churches. We contacted the Reverend Clark who was the chairman, as I understood it, chairman of the church group, the Rock Island -- well, I don't know the exact title. I have a letter.

Q. And that was to determine whether the alliance or association would support this? A. Yes, sir.

* * * * *

[Tr. 3105]

BY MR. MILLER:

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[Tr. 3109]

Q. Do you know whether all sections of the civics classes at the high schools in the Quint-Cities would meet at the same time of day?

A. No, I don't.

Q. You don't know, or -- A. I don't know.

Q. Did you contact the high schools in regard to this type of program?

A. We contacted the Superintendent of Education of Moline, East Moline and Rock Island. There were three individual men. I don't want to infer there was one man in charge of all three.

Q. And was that to determine what the school's needs and interests might be in connection with this type of program? A. Discussion of the school's needs and interests, yes, sir.

* * * * *

[Tr. 3110]

Q. This description goes on on line 6 to state "Local young people, church groups, high school and college fraternities and sororities and school groups will participate." A. Yes, sir.

Q. Did you get in touch with high school or college fraternities or sororities? A. We talked with the officials of the Mary Crest College and St. Ambrose.

Q. You say officials. My question was whether you got in touch with any high school or college fraternities or sororities? A. No, sir, we did not.

Q. Did you contact any church groups in connection with their participation on this program? A. No, sir.

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[Tr. 3111]

Q. Refer to page 56 of the same exhibit, sir, at lines 5 through 7, Mr. Schreiber, it says "This program will be produced in cooperation with local schools, universities and cultural groups, and going down to lines 11 through 16, there is reference to the Tri-City Symphony and the Civic Music Association, is that correct, sir? A. That is right.

Q. Now, did you contact either of the Tri-City Symphony or the Civic Music Association? A. No, but I believe Mr. Stengel did.

Q. Were these among the contacts made in the fall of '57? A. Yes.

Q. And sometimes this program might be produced in cooperation with those organizations, is that correct? A. That is correct.

Q. Now, do you consider that the Tri-City Symphony and the Civic Music Association are educational institutions within the meaning of the Commission's definition of an educational program? A. Well, they are certainly educational. I think if you pin the thing down to strictly the Commission's definition, depending -- it would depend upon whether the Tri-City Symphony performed at the request of or for the benefit of an educational organization, such as one of the colleges.

[Tr. 3112]

Q. Now, this states that whenever possible the program will present actual performances of the symphony and the Civic Music Association, is that correct? A. That is correct, yes, sir.

Q. And what is the time of this program, sir? A. The time of it is 9:00 p.m. on Friday evenings.

Q. Do you know when the Tri-Cities Symphony has its regular concerts? A. No, I do not.

Q. Do you know when it rehearses? A. No, I do not.

Q. Do you know when the Civic Music Association performances occur? A. No, it was up to Mr. Stengel. That information came from him.

Q. Do you know whether or not the Civic Music Association performances are one-night stands, or continuing performances? A. No, they run, depending upon the appeal, ticket sale, and so forth, they can run one night or more.

Q. Do you know whether they usually run for several nights? A. What is that?

Q. Do they usually run for several nights? A. I couldn't answer that, I don't know.

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[Tr. 3126]

Q. Mr. Schreiber, turning to another line of inquiry, while you were manager of Station WGN-AM and TV, did the station ever use per inquiry type of advertising? A. Yes.

Q. What sort of products were involved in that advertising? A. Well, we had a very limited amount of it. Some of the products were mouth organs, dolls --

Q. Were those the walking dolls? A. No, it was not the walking doll.

Q. Did you advertise bullet-proof bibles on "Per Inquiry"? A. No.

Q. Flowers that grow in the dark? A. No.

Q. Did WGN ever use what is known as the mail order network?

A. Yes.

Q. What was that, sir? A. That was a sales organization that was not anything in the way of a network as a radio man's concept of a network would be. It was a mail order sales organization, I believe,

[Tr. 3127]

located in New York City.

Q. Now, what was the nature of your relationship with them in connection with your advertising? A. We sold the mail order network time period, as I recall.

Q. I don't know that I understand your answer. Do you mean you sold time to the mail order network for their re-sale, is that what you mean? A. No, the mail order network was owned by one man who had products, who either manufactured or bought products for resale.

Q. Well, what was your arrangement with them in terms of the advertising? A. They bought periods of time on which to advertise the products they sold.

Q. And were all of these products sold on the mail order basis, is that right, over the air -- it was mail order advertising, is that correct? A. It was mail order advertising, yes, not per inquiry to distinguish it from that.

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[Tr. 3128]

Q. Did WGN or WGN-TV under your managership carry advertising for mail order purchase of various nursery products, flowers and shrubs?

A. Yes.

* * * * *

Q. Did you ever carry advertising of a product known as the Blue Rose? A. I don't believe we handled Blue Rose.

Q. Are you familiar with the Blue Rose? A. Yes, I heard quite a bit about it.

Q. You mentioned dolls. Did you advertise the walking doll made of balloons over WGN-AM or TV? A. No.

Q. Did you ever receive any complaints from listeners about the mail order products that were advertised, or the per inquiry products? A. Some.

Q. Did you advertise mail order detective lessons? A. No.

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[Tr. 3130]

Q. You say you carried the Charles Antelle Advertising for a period of time? A. I said we carried it for a limited time, because we restricted the repetition of the episodes to two usages, and when we wouldn't accept any more than two usages of each film, the advertiser quit us, because he could get more plays on other stations.

Q. Was the nature of that program what is commonly referred to as a pitch commercial? A. In my opinion it was a pitch commercial.

Q. How long was the advertising continuity? A. It is a matter of opinion.

Q. Wasn't the whole segment of time pretty much a commercial exposition of the product? A. In my opinion it was a 15-minute commercial, the episodes we had, which was one of the reasons we took it off.

* * * * *

Q. Did the stations under your managership advertise such things as reconditioned vacuum cleaners and storm windows, do you recall?

[Tr. 3131]

A. I don't believe we advertised reconditioned vacuum cleaners. We advertised storm windows.

Q. Roofing and siding? A. Not unless they were on a regular construction company program, such as Community Builders.

Q. Now, were any of these that I have mentioned which you say you carried, were any of these in the nature of pitch commercials?

A. No.

Q. Did you ever receive any complaints on the storm window advertising? A. Yes, we received some complaint on storm windows.

Q. While you were manager, did the stations carry advertising for the Jim Moran Courtesy Motors? A. Yes, sir.

Q. Do you know who prepared the commercials for those programs? A. Yes, sir.

Q. Who prepared them? A. Malcolm-Howard Advertising Agency.

Q. And how long were those commercials, do you recall?

A. Time, how long did they run?

Q. The length of the commercial. A. They ran various times.

Q. What was the longest one that you remember?

[Tr. 3132]

A. Eight to ten minutes.

Q. Were many of them that long? A. Yes, they only used two commercial positions in a two-hour program.

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[Tr. 3133]

BY MR. MILLER:

Q. Mr. Schreiber, while you were manager of WGN and WGN-TV, did you operate the stations in accordance with the principles of the NARTB Code? A. I felt that we did, yes.

Q. After you left the station, did you observe the programming of the station on the air? A. Yes, I observed some of it.

Q. Did you notice any changes that were made in the programming or commercial policies after you left from your observation of the program? A. No, I did not.

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[Tr. 3137]

BY MR. KITTNER:

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[Tr. 3142]

Q. Now, sir, with respect to your participation in the program development of this applicant -- A. Yes, sir.

Q. Do you recall your testimony that you spent a good deal of time with Mr. Gilman and Mr. Parson? A. Yes, sir.

Q. In terms of Part 4 of the application as it was originally prepared, was there someone who had the principal responsibility for developing percentages and what not with respect to programs? A. Could I hear the question again, please?

(Question read.)

[Tr. 3143]

THE WITNESS: I don't think it was any one person. I think these percentages were developed out of discussion.

BY MR. KITTNER:

Q. Well, now, were the discussions principally between you and Mr. Parsons or Mr. Gilman? A. And counsel.

Q. And counsel? A. Yes.

Q. And at that point, had Mr. Gilman ever been employed in a television station? A. Not to my knowledge.

Q. Do you know whether he has ever had any production responsibilities in a television station? A. No, sir.

Q. Do you know whether he has ever appeared and performed in a television station? A. No, I don't.

Q. Now, with respect to Mr. Parson, has he ever been employed by a television station, other than as counsel? A. Other than as counsel?

Q. Yes. A. I don't know. I don't believe so.

Q. Do you know whether he has ever had any operational responsibilities with respect to a television station? A. No, but a great deal of experience.

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[Tr. 3149]

AFTERNOON SESSION

2:00 p.m.

FRANK P. SCHREIBER

resumed the stand as a witness and, having been previously, duly sworn, was examined and testified further as follows:

THE PRESIDING OFFICER: Proceed.

CROSS EXAMINATION (Resumed)

BY MR. KITTNER:

Q. Mr. Schreiber, before going back to the line of questioning at which we dropped our interrogation before lunch, have you had an opportunity to review the amendment filed by Moline in April of 1958?

A. Yes.

Q. And have you had an opportunity to look at the programming material filed with that amendment? A. Yes, sir.

Q. Have you had an opportunity to determine specifically who is shown as having been responsible for actually having prepared the program material there? A. That shows that I was responsible.

Q. And after your name there the numeral 1 appears in parentheses, is that correct? A. The same as it does in the original application.

Q. Right.

Now, we were talking about the nature of the representations that were made in connection with programming, and in

[Tr. 3150]

that connection I called your attention, I believe, to certain program descriptions that were attached to your original application. Do you recall those program descriptions? A. Yes, sir.

Q. When those program descriptions were submitted, I assume they were submitted in all seriousness, is that correct, sir? A. Yes, sir.

Q. They were the best representations that you knew how to make at the time with respect to your proposed programming, is that correct? A. Yes, sir, I would say that.

Q. And you felt a responsibility. I assume, to do whatever was possible as a practical matter for assuring the reliability of those representations? A. Yes.

Q. And in that connection you went out and made a number of contacts in the community, is that correct, sir? A. I don't know whether you would call ten a number of contacts, or a dozen --

Q. Would you not call that a number of contacts? A. No, I say I made probably ten or a dozen visits to different places.

Q. Are you quibbling about whether they were contacts?

THE PRESIDING OFFICER: He isn't quibbling.

[Tr. 3151]

THE WITNESS: I am not quibbling.

MR. KITTNER: I asked whether he made a number of contacts.

THE PRESIDING OFFICER: He wanted to be accurate in his answer to you. What do you mean by a number?

MR. KITTNER: More than one.

MR. DOWD: I think you qualified your question, Mr. Kittner. You said -- and if you will read it back, I would like to have the question read back because you just didn't ask whether he made a number of contacts.

MR. KITTNER: Let's go from there and just ask that.

MR. DOWD: Let's go back and read the question. You are quibbling about the answer.

MR. KITTNER: Fine.

(Question read.)

THE PRESIDING OFFICER: I still don't know what you mean by a number.

MR. KITTNER: In that connection the witness has now stated that he made approximately ten, did you say?

THE WITNESS: About that, yes.

MR. KITTNER: So that whatever the specific definition of the term "number" may be, we have the information in the record.

BY MR. KITTNER:

Q. In that connection to your knowledge did Mr. Stengel also make certain contacts in the community?

[Tr. 3152]

A. Yes, sir.

Q. Approximately how many would that be? A. Approximately the same number that I made, because he was with me.

Q. I see. Mr. Stengel made no independent contacts? By independent I mean independent of your presence? A. No, sir. Unless -- he brought me some information about the music organizations of the community, and I don't know whether he actually contacted or met with people to talk about that or not.

Q. When you said you made a number of visits, I was referring to contacts and your response was in number of visits. Is there any implication in that statement that these visits weren't contacts? A. No.

Q. You did talk to people about possible programming, is that correct, sir? A. Yes.

Q. And the purpose of those visits or contacts was what?

A. The purpose of those visits, as far as I was concerned, was to make me acquainted with people in the community that I might be dealing with at some later date.

Q. Did you have in mind determining whether you could represent to the Commission that specific persons or organizations

[Tr. 3153]

might participate in your programs? A. I had no such feeling about it.

Q. Did you in fact represent to the Commission that certain of the people that you visited would in fact participate in those programs?

A. I don't recall what our notes say about that, what our description said there.

Q. Let me ask you, sir: Did you visit Augustana College?

A. Yes, sir.

Q. Did you visit St. Ambrose College? A. Yes.

Q. Did you visit Marycrest College? A. Yes.

Q. Did you visit anybody connected with the Moline schools?

A. Yes, sir.

Q. Did you visit anybody connected with the Davenport Public Schools or with anybody connected with the Rock Island -- A. Yes. Davenport Public Schools -- I don't recall Davenport Public Schools. I recall in the school systems, Moline, East Moline and Rock Island.

Q. Perhaps to save time, unless your counsel objects, let me just read certain lines from your program descriptions connected with the original application. Do you have any

[Tr. 3154]

objection, Mr. Dowd? I would be happy to walk around to show it to the witness.

MR. DOWD: I have no objection to your reading.

BY MR. KITTNER:

Q. I read, sir, from page 3 of your Exhibit No. 13 attached to your original application under the hearing "Educational Programs." I have reference particularly to the words "Arrangements have been made with local educational groups and others to work with our Educational and Public Affairs Director in presenting outstanding programs. These local organizations such as" -- and then there appears the listing that I read a moment ago. Am I correct in that, sir? A. Yes.

Q. Now, subsequent to the filing of your application with the Commission, when was the next time, if there came a time, when you considered the question of whether additional contacts should be made?

A. Well, we discarded -- we adopted the policy of making no additional contacts in the meeting of October of 1957.

Q. And was that on your recommendation? A. It was on my recommendation.

Q. When the matter arose with respect to the preparation of exhibits for this proceeding, was there any reconsideration whatever given to that policy that you have just

[Tr. 3155]

described?

MR. DOWD: Which policy, you mean the policy of no contacts?

MR. KITTNER: No contacts.

THE WITNESS: Of no further contacts?

MR. KITTNER: Yes.

THE WITNESS: If there was any discussion, it resulted in that the policy was reaffirmed.

BY MR. KITTNER:

Q. I didn't ask you what the result was. I asked you specifically whether to your knowledge when the question before the applicant was the preparation of exhibits for this proceeding, whether at that time to your knowledge further consideration was given to the question whether contacts should be made? A. I don't remember that there was.

Q. As far as you know there weren't, is that correct? A. That is right.

Q. You didn't participate in any such discussion? A. Not that I recall.

THE PRESIDING OFFICER: Off the record.

(Discussion off the record.)

THE PRESIDING OFFICER: On the record.

BY MR. KITTNER:

Q. Mr. Schreiber, my last line of questions I believe

[Tr. 3156]

went to what you did and your participation. Were you advised by any of the officials of Moline that the question whether contacts should be made had come up and been considered again, after October of '57?

A. No.

Q. So to your knowledge, not only have you not participated in any such consideration, but you don't know of any other consideration given by the corporation or its members, is that correct? A. I don't recall it.

Q. Now, sir, during the time that you have been connected with the corporation, and subsequent to October, '57, in connection with your work, have you found -- have you felt it would be desirable to make contacts in connection with programming matters? A. I never felt it would be desirable to make contacts for programming matters.

Q. And that would be true in connection with any of the work that you have done? A. Right from the first day I visited Rock Island.

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[Tr. 3164]

BY MR. BILGER:

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[Tr. 3165]

Q. Did you have any particular reason then, Mr. Schreiber, for stopping at ten or twelve? A. I sure did.

Q. And your reason?

[Tr. 3166]

A. In all my experience in running a radio station I discovered that any time you offered anybody free time they were willing to accept it, but if you offered them free time plus production, writing, production, staging, even on up to where you paid for the talent that took the part of those various characters in the program, they were more than delighted. I said that -- I told my associates that I thought it would be just completely a waste of time, except for the personal contacts that I could make, and by contacts I meant acquaintanceships that I could make, to go around and say "What kind of program do you fellows want us to produce for you?" when we knew that there wasn't a Chinaman's chance of getting this station on the air for an extended period of time.

Now, the reason that we probably -- I know it wasn't probably -- the reason that I went along with the Stengel theory, was that Mr. Stengel

thought inasmuch as our then Washington counsel had recommended that we go out after these contacts, that we should follow their advice. * * *

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[Tr. 3193]

BY MR. DOBIN:

Q. As I understand it, Mr. Schreiber, you made certain contacts in the fall of '57 with Mr. Stengel? A. Yes.

Q. Did you make them before or after you signed the stock subscription agreement, if you remember?

[Tr. 3194]

A. I believe it was before.

Q. At the time had you prepared the program proposal? A. We were working on it, it had not been completed.

Q. Now, as I understand it, when you went to visit these people you had a different purpose in mind than Mr. Stengel, is that correct?

A. I did.

Q. You wanted to just meet these people in effect, to see who you might be dealing with, is that correct? A. Yes, sir.

Q. Mr. Stengel was interested in some additional information from them, is that correct? A. Yes.

Q. And by the time you filed the application in December of 1957, Mr. Stengel had come around to your thinking, I gather, is that correct?

A. Yes, sir.

Q. And the whole corporation had, as a matter of fact? A. As a matter of fact, the remaining stockholders felt the same way.

Q. Did you ever have an exception to your policy with respect to educators, the corporation policy? A. Exception?

Q. Exception. Was there ever an exception to your corporate policy on this matter with respect to educators?

[Tr. 3195]

A. The corporate policy on the matter of --

Q. Making contacts? A. Making contacts?

Q. Or not making them? A. I don't feel that there was after that meeting at which we agreed to --

Q. Was there an exception to any policy prior to this meeting you are referring to? Was there ever an exception about educators?

A. The policy on the matter of educators actually was determined by the corporation at a meeting in October.

Q. Of what year? A. When Mr. Stengel and I reported.

Q. Of '57? A. Of '57.

Q. All I am asking you right now is: Up to that time, did you treat educators differently from other people? A. No.

Q. After that time did you treat educators differently from other people? A. No.

Q. No one ever suggested to you that there was a different policy to be followed by the corporation with regard to contacts insofar as they related to educators? A. Not after we once determined the policy.

[Tr. 3196]

Q. I want to go back to before the policy then -- after the policy certainly the answer is no one ever told you there is a different rule for educators? A. No.

Q. Before the policy, was there ever a different rule for educators? A. I was the only one against the policy -- maybe Mr. Parson agreed with me.

Q. I don't think you follow me. You had an opinion about contacts in general? A. Yes, sir.

Q. Mr. Stengel had a different policy about contacts. In October of 1957 you had a meeting and you came to a common view on this subject, is that correct? A. That is correct.

Q. After that there was no different policy on educators? A. Not that I was aware of.

Q. Right, sir. Now, prior to the October, 1957, meeting when you got a common ground with Mr. Stengel and the others, did you have a different policy on educators? A. We had no policy on educators.

Q. All right. Now, when you prepared your application in December, why did you include information about arrangements with educators?

A. It was included because I thought it was indicative

[Tr. 3197]

of the fact that we would get all of the support we wanted, provided we gave them time and production assistance.

Q. This is even though you felt that the arrangements didn't make a difference? A. I felt then as I do now, that as long as we have the time available and are willing to put the manpower behind it, we will get a lot of cooperation, all the cooperation we could possibly use for programming from educators, farm advisors, civic organizations, and other organizations that we would want to promote inside of that entire area.

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[Tr. 3227]

REDIRECT EXAMINATION

BY MR. DOWD:

Q. The question was asked as to whether you had a disagreement on staff at the time you submitted your resignation at WGN, and you stated yes. What event, if any, had preceded this disagreement or led up to this disagreement? A. The fact that the death of Colonel McCormack put the station under a new management. And the new management wanted a very drastic cut in staff, which I was unwilling to agree to.

Q. And as a result -- A. As a result of which we agreed to disagree and I resigned.

* * * * *

[Tr. 3229]

Q. The question was raised with reference to programs sponsored

by Courtesy Motors -- strike that. The question was raised as to the length of commercials of Courtesy Motors. Were those spot announcements? A. No, sir, they were demonstrations, car demonstrations, automobiles.

Q. Were they spot announcements or part of commercial copy and sponsored programs? A. No, they were sponsored programs -- they were the commercials, they would demonstrate automobiles. They were not spot announcements. They were all one commercial.

Q. Did he buy a segment of time? Did Courtesy buy --
A. Courtesy Motors bought a segment of time and located these commercials within that time setment.

Q. Did you indicate this morning or yesterday that they bought two hours or an hour and a half program? A. They bought -- we had an arrangement whereby if the program ran -- a minimum buy was an hour and a half, from then on he paid additional for extra time and he never ran -- I don't ever recall a film program that he had that run under two hours, film and commercials.

Q. And this commercial was a commercial within this

[Tr. 3230]

sponsored segment? A. Within the entire sponsored segment.

Q. How many commercials would he normally run within an hour and a half film program? A. Two.

Q. You made a statement with reference to the Charles Antell program, something to the effect that you were the first. Did you mean you were the first to carry that program? A. No; we were the first to throw them off.

* * * * *

[Tr. 3231]

RECROSS EXAMINATION

* * * * *

[Tr. 3232]

BY MR. BILGER:

Q. With respect to the Courtesy Motors film situation, was this feature film that was used? A. Yes, it was feature film of the highest price and highest type.

[Tr. 3233]

Q. Isn't it so that that generally runs about a half hour, Mr. Schreiber? A. No, that is not true, that is not true by any manner.

Q. It is your testimony that your feature films ran longer than that? A. We ran most of his film uncut. We ran at WGN 35 millimeter film which was unusual and most of it ran uncut.

Q. Do you recall the average time of the film? A. No, I don't. I think I testified that the average Courtesy program, commercials included, to my knowledge, never ran under two hours. It was ten o'clock on Sunday nights and I never recall that we ever finished one before midnight. I know because we paid over time to production crews.

MR. MILLER: One further question -- are you through?

MR. BILGER: Just a second.

MR. DOWD: This is kind of whip-saw -- I think this is beyond the scope.

BY MR. BILGER:

Q. All right, Mr. Schreiber, I have two more questions.

Mr. Schreiber, how many announcements did you say you used in this two-hour period? A. Two of the selling announcements.

Q. And what was the average length of those announcements? A. I don't believe there ever was an average.

Q. What was the maximum length of them?

[Tr. 3234]

A. I think I testified that some would run as long as eight minutes.

Q. That was the maximum? A. Yes, I don't think every --

Q. So you would have 16 minutes of commercial in a two-hour period? A. No, that is not true. Because the second announcement would be shortened. I don't think Moran ever ran more than 15 minutes of commercial in his entire period.

* * * * *

MR. DOWD: Prior to the time the witness is excused, I discussed with counsel this afternoon, I believe, that there was a letter identified in the Commission's files this morning by Mr. Miller dated February 18, 1952, which Mr. Miller has asked be incorporated into the record and he will furnish you a photostatic copy. Counsel has agreed to stipulate that at or about the same time 28 identical letters, except for certain cross-outs as might be indicated on this one, but a form letter, were sent to television stations at the same time, at which time there were 108 commercial television stations operating.

MR. DOBIN: What you mean is that some people had zeros in different categories?

MR. DOWD: The only thing that was lined out -- it says "The amount of time devoted to commercial programs or the number of commercial announcements broadcast." Apparently that was

[Tr. 3235]

changed, and it is possible that different ones might have have different categories.

MR. DOBIN: That is the point. My recollection is that we I think in the bar called it the zero letter. If you had a zero in your past performance, particularly in your proposal in any category of these lists, the Commission sent you a letter. So some people might have had two zeros and everyone would have a different letter to that extent.

* * * * *

[Tr. 3237]

Friday, March 13, 1959

* * * * *

[Tr. 3239]

PROCEEDINGS

THE PRESIDING OFFICER: Proceed.

MR. GREEN: Mr. Gilman.

SAMUEL L. GILMAN

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREEN:

Q. Will you please state your name? A. Samuel L. Gilman.

Q. You are a five per cent stockholder and director of Moline Television? A. That is correct, sir.

Q. Would you please state your address? A. Rock Island, Illinois.

* * * * *

CROSS EXAMINATION

BY MR. MILLER:

* * * * *

[Tr. 3245]

Q. Did you have occasion to ask Mr. Parson whether or not WGN-TV under Mr. Schreiber's managership had subscribed to the NARTB Code? A. Yes.

Q. What did he tell you on that score? A. He said they had not. By "subscribed" I am assuming that you mean had they become an actual member of the Association.

Q. That is right.

* * * * *

[Tr. 3251]

Q. Would you refer to Exhibit 4, please? This is your proposed program schedule?

[Tr. 3252]

A. Yes.

Q. At the end of that exhibit appears your affidavit as stating it is true and correct to the best of your knowledge and belief, sir?

A. Yes.

Q. Now, who prepared the schedule, itself? A. Well, it was a combination effort on my part and that of Mr. Schreiber and Mr. Parson.

Q. And where was this done? A. Well, it was done in Rock Island and Chicago.

Q. The three of you did not sit around the table together, is that correct? A. Well, sometimes we did.

Q. In working on the schedule? A. Sometimes we would work on it individually, sometimes we would work on it in pairs, sometimes we would work on it all together.

Q. Now, have you ever worked in a radio or television station, sir? A. No, sir.

Q. Had you ever had any previous experience in preparing a schedule? A. No.

Q. Have you ever prepared any program descriptions before becoming involved in this case?

[Tr. 3253]

A. No.

Q. Did you write the program descriptions in Exhibit 5? A. Yes. If by "writing", did you mean did I physically write them?

Q. Yes, did you physically write them? A. Yes.

Q. Did anyone else contribute to the written material there contained? A. Certainly.

Q. With whom did you discuss the descriptions? A. Well, we discussed this with a great many people, but the other primary people involved were again Mr. Schreiber and Mr. Parson.

Q. I see.

Who wrote the statement of policy appearing in Exhibit 3?

A. I am assuming that you are not referring, Mr. Miller, necessarily, to who reduced it to final form and physically wrote it?

Q. Who prepared the actual draft of the language? A. The language is probably a combination of mine, Mr. Schreiber's, Mr. Parson's, counsel, Mr. Agnew, Mr. Day.

Q. You mean all these people physically prepared the draft?

A. I was assuming, sir, when I asked you before that you weren't restricting this to who actually physically wrote it.

[Tr. 3254]

Q. That is what I did intend, Mr. Gilman.

MR. DOWD: That isn't what your question was. You said who participated.

MR. MILLER: I said who prepared the actual draft.

THE PRESIDING OFFICER: I think that is what you said, but I would assume by that you meant who was the intellectual author of it rather than manipulator with pieces of paper and a typewriter. Which do you mean?

MR. MILLER: I meant who physically prepared the draft and wrote this language, that is what I am getting at.

MR. DOWD: That is a different thing. I mean maybe the stenographer physically wrote it. I don't assume that is what you want, Mr. Miller, but if you do we will try and get her name.

MR. MILLER: That is not what I want. I am asking who wrote the language that appears in here?

THE PRESIDING OFFICER: Whose baby is it?

MR. MILLER: When you and I sit down and write a brief, we write it, don't we?

MR. DOWD: No, I oftentimes dictate it.

THE PRESIDING OFFICER: Standing up, is that it?

BY MR. MILLER:

Q. Do you understand the question? A. Yes, in light of the Examiner's question. I suppose it was my baby but we had many midwives.

* * * * *

[Tr. 3266]

Q. Do you know when Tri-City Symphony's regular concerts occur?
A. Yes.

Q. When is that, sir? A. On Saturday evening and Sunday afternoon.

Q. Do you happen to know when it rehearses? A. No.

Q. Do you know when the civic music association performances occur? A. As I recall it, the early part of the week, either Monday or Tuesday.

Q. In the evenings? A. Yes.

Q. Are these performances usually one-night stands, of either travelling groups such as the ballet, individual performers?

MR. DOWD: Which performers?

MR. MILLER: Civic.

THE WITNESS: Civic? Yes.

* * * * *

[Tr. 3267]

Q. Do you think that programs which would specifically serve the needs of home demonstration agents and farm advisers would be desirable? A. Yes.

Q. Can you tell how far Muscatine, Iowa, is from the Quint-Cities?
A. About 35 miles.

Q. Do you know whether or not there is an Optimist Club in Muscatine? A. My own knowledge?

Q. Yes. A. No.

Q. Do you know whether there is a home adviser there? A. No.

Q. How far from the Quint-Cities is Wilton Junction, Iowa?

A. Oh, it is roughly about the same distance.

Q. Do you know whether there is a County Agricultural Agent located there?

[Tr. 3268]

A. No, sir, I don't.

Q. Do you know whether there is a Parochial School there?

A. No, I don't.

Q. Where is DeWitt, Iowa, in relation to the Quint-Cities?

A. DeWitt is about thirty miles.

Q. Do you know whether it has a junior high school? A. No.

Q. Do you know whether it has a Parochial School? A. No.

Q. Do you know whether there is a Farm Bureau office there?

A. No.

Q. Where would West Liberty, Iowa, be in relation to the Quint-Cities? A. It is also roughly the same distance.

Q. Is it the same distance as Muscatine, roughly? A. Oh, give or take ten miles, 10, 15 miles in our part of the world doesn't make much difference.

Q. Do you know whether there is a Jewish Synagogue there?

A. Where is this?

Q. In West Liberty, Iowa. A. There is not.

Q. There is not? A. Do you want to ask me about the Rabbinical Association in the Quint-Cities?

[Tr. 3269]

Q. Do you know what Moline Institute of Commerce is?

A. I am not sure it is still in existence.

Q. What was it, do you know? A. If we are talking about the same sort of thing, we are talking about a school for typists and stenographers and the like.

Q. Secretarial school, in effect, is that right? A. That is my recollection.

Q. Do you know whether the American Institute of Commerce in Davenport is the same type of organization? A. That is the kind of thing I am thinking of.

Q. Is the American Institute of Commerce in Davenport a secretarial school? A. I am not sure that it exists any more, either. But I passed it for years when I lived in Davenport.

Q. But was it a secretarial school, do you know? A. That is my recollection, unless the title was something different from what I have in mind.

Q. Do you know whether there is a Parochial School in West Liberty? A. No.

Q. Where is Bureau, Illinois, in relation to the Quint-Cities? A. Bureau is about 90 miles.

Q. Do you know whether or not there is a Lion's Club in

[Tr. 3270]

Bureau? A. No.

Q. Do you know whether there is a Moose Lodge there? A. No, I don't know specifically.

Q. Do you know who the Clinton County farm adviser is? A. No, sir.

Q. Do you know who is president of the Bettendorf Chamber of Commerce? A. No, I don't recall.

Q. Do you know who the City Manager of Galesburg is? A. No.

Q. Do you know Mr. Loren Young? A. No.

Q. Do you know what he does? A. I don't even know him.

Q. But you might know what he does? A. That is right. I don't know what he does.

Q. Do you know Mr. K. E. Beasley? A. No.

Q. Do you know what he does? A. No.

Q. Do you know Mr. Paul Crafton? A. No.

Q. Do you know what he does? A. No.

[Tr. 3271]

Q. Have you ever heard of the Quad-County 4-G Club Baby Beef Show? A. I may have.

Q. Do you know where it is held? A. No.

Q. Do you know how many years it might have been running?

A. No.

* * * *

[Tr. 3274]

BY MR. BILGER:

* * * *

[Tr. 3278]

Q. Now, Mr. Gilman, I want to refer you to Moline Television Corporation Exhibit No. 4 which is the agreement between Moline Television Corporation and Frank P. Schreiber, specifically to the clause, the second "whereas" clause, would you read this, please, sir, just for purposes of identification? It is already in the record. A. Read it aloud?

Q. Yes, sir. A. "Whereas, Schreiber asserts that the radio and television stations under his management at all times complied with the rules and regulations of the Federal Communications Commission and in no instance did said stations encounter any difficulty in continued renewal of broadcast license by the Federal Communications Commission, and" ---

Q. Thank you. Did you personally rely upon that clause when you executed this document? A. Did I think it was an important assertion? I mean, excuse me, sir, I am a lawyer, too. Now, "reliance" has a specific meaning to me. Did I think he was telling the truth? Yes. Was it important to me? Yes.

* * * *

[Tr. 3283]

Q. * * *

Would you look at your Exhibit 2-G, which is your testimony, page 3, please, sir? A. 2-G?

Q. Do you have it? A. What page was that, sir?

Q. Page 3, lines 12 to 14, the sentence beginning on line 12 reads: "Since none of our stockholders is a professional educator, although several have served on school boards, we felt we should make an exception and contact professional educators."

Is that still valid, sir, insofar as you are concerned? You still adhere to the thought expressed here, do you not? A. Well, what this means is that when we made our contacts in the formal sense in which they have been used in this hearing, that we beefed up or weighted those contracts which were made with professional educators.

* * * * *

[Tr. 3284]

Q. Doesn't this sentence simply say, Mr. Gilman, that you made contacts with professional educators because you don't have any professional educators in your board of directors? A. Yes.

Q. All right, which one of your board of directors is a professional newsman? A. Mr. Harper.

Q. And which one is a professional religious man? A. None.

Q. Which one is a professional farm man? A. Farm man?

Q. Yes, sir, farmer, if you like. A. Judge Hebel.

* * * * *

[Tr. 3295]

REDIRECT EXAMINATION

BY MR. DOWD:

Q. You mentioned in your direct testimony that you see Mr. Parson frequently, is that true? A. Yes.

Q. Do you see him -- where do you see him? A. In Chicago and Rock Island.

Q. In other words, you see him in Rock Island. Is this only in connection with this application? A. No.

Q. Have you seen him in Rock Island over a period of years? A. Many times.

Q. Why? A. He has a sister and her family who have lived in Rock Island for many years and mother and father, the father having recently died.

[Tr. 3296]

* * * * *

BY MR. DOWD:

Q. You started to answer Mr. Miller with reference to the drafting of a policy and you started -- we got into a discussion, somewhat academic over the word "drafting." But I believe you started to state -- you listed some people who participated in the drafting. Would you complete that statement

[Tr. 3297]

and indicate the areas, if possible, the areas in which they participated, if you know? A. Mr. Schreiber, we have already spoken about, Mr. Coyle participated on this question of Canon 35 as to which no policy was adopted. Mr. Agnew was concerned in the pharmaceutical drug advertisement field and of course he was concerned also about F.T.C. releases, as I recall it, and a number of other things which I don't now recall concerning Agnew.

Day, being a manufacturer and a registered pharmacist, was concerned about much the same sort of thing.

He, as I recall, wanted to make certain that we would subscribe to the publications of the Better Business Bureau of Chicago. I don't now recall about Dr. Helfrich. Mr. Stengel was very firm about the educational policy. He was about that time appointed to the Commission on

Higher Education of the State of Illinois and was intensely interested in this subject. I think I mentioned myself.

Other bigger things that occur to me at the moment are the editorial position, Mr. Harper, this was his. Mr. Hebel, as to agriculture. Mr. Leonard was concerned about a number of things. Being an advertiser, he wanted to make sure that there would be no preferences and he was particularly concerned about this local merchant problem which has been referred to this morning because he was aware that presently local merchants, that is, in his opinion, that local merchants

[Tr. 3298]

simply could not afford to buy television time in our community. Mr. Parson, of course, was in and out of the statement of policy all of the time. Mr. Rehling got into this discussion on Canon 35.

There are a number of other things which I can't now recall in detail.

Q. Questions were asked, again I believe by Mr. Miller, as to whether you thought programs on specific subjects such as industrial development and home economics and so forth were advisable, and I believe you said "Yes"? A. Yes.

Q. Is there any particular segment provided for discussion of such programs? A. Yes, of course.

Q. Are they necessarily listed by such titles? A. No.

Q. Is there a rabbinical association in the Quad-City area?

A. There are only three rabbies, and there is no association of them. They talk to each other, I am sure, frequently.

* * * * *

[Tr. 3299]

Q. Did you discuss the license history or the activities of Mr. Schreiber with Mr. Parson? A. Yes.

Q. And did Mr. Parson advise you that he handled the legal affairs

of WGN-TV during the period of time that Mr. Schreiber was manager?

MR. HILGER: Objection.

[Tr. 3300]

THE PRESIDING OFFICER: Let me have the question.

(Question read.)

THE PRESIDING OFFICER: Overruled.

THE WITNESS: During a part of that time.

BY MR. DOWD:

Q. Irrespective or covering the entire period of time that you have learned of these various activities, in your opinion are you still satisfied with the recitation of the "Whereas" clause, as a lawyer and stockholder in Moline Television? A. I certainly am, and may I explain that?

THE PRESIDING OFFICER: It isn't necessary. I think much too much is being made out of those parking tickets.

MR. DOWD: I realize that, too.

BY MR. DOWD:

Q. Are you familiar with the economic structure of the surrounding community of the Quad-City area? A. Yes.

Q. What, generally, is that economics structure? A. It is largely agriculture, with some industrial, and other things which may be dependent on both of those.

Q. Is that generally true of the various communities that were mentioned by Mr. Miller in his examination? A. Certainly.

* * * * *

[Tr. 3301]

RECROSS EXAMINATION

BY MR. MILLER:

Q. Did you help prepare Exhibit 13 to the Moline application, sir, which describes the local programs? A. I was in the discussion.

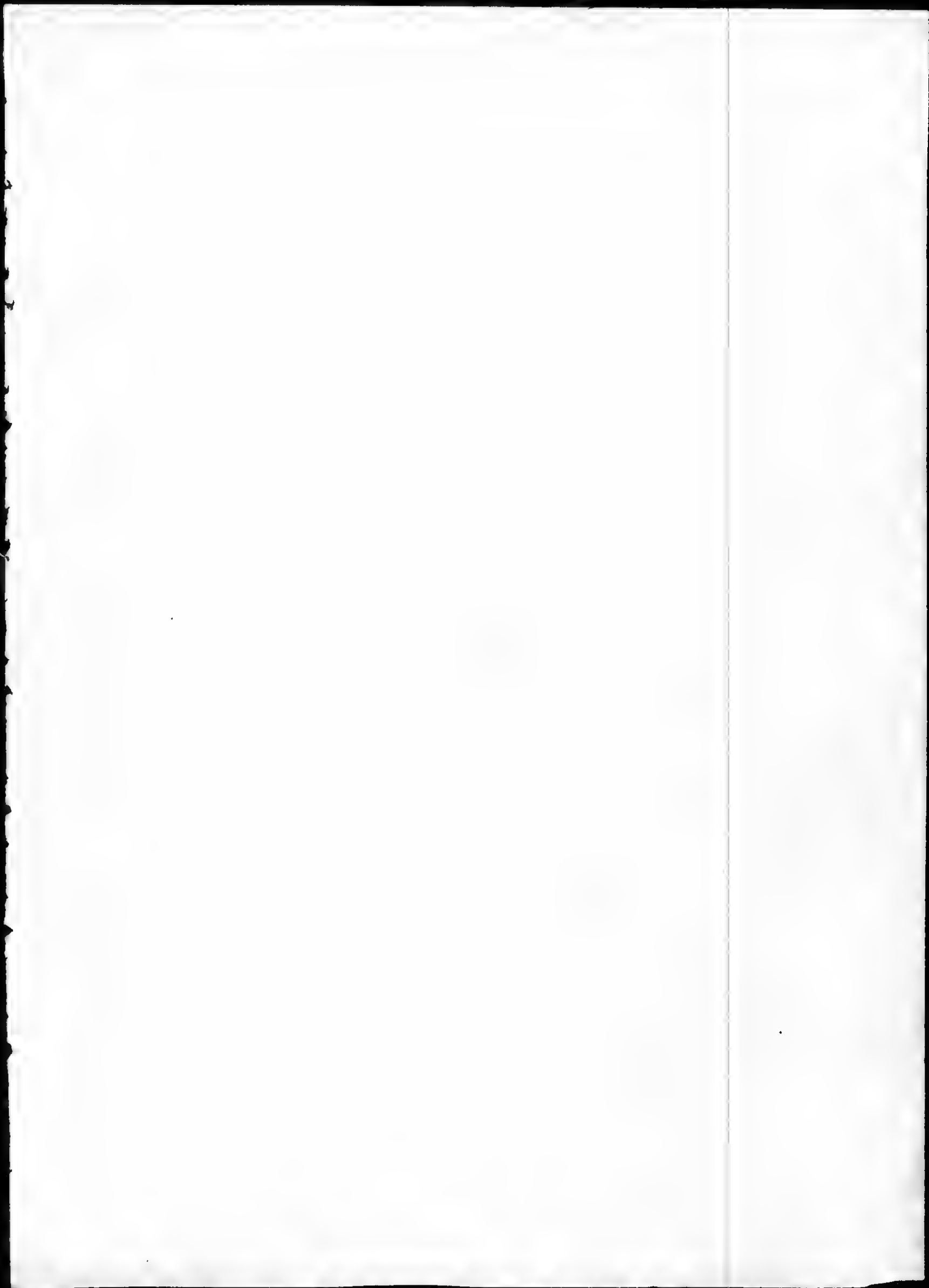
Q. I refer you to the program "Morning Devotion," the description, this will be programmed in connection with the Ministerial Association, the Rabbinical Association and the Catholic Diocese. Why did you include the Rabbinical Association? A. It was included by error.

Q. You say, Mr. Parson told you about the matters that

[Tr. 3302]

were gone into with respect to the renewal of license at WGN back in 1952? A. Yes.

* * * * *



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SUPPLEMENTAL JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION, Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

United States Court of Appeals No. 17,102
for the District of Columbia Circuit

FILED FEB 1 1963
MIDLAND BROADCASTING CO., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

Nathan J. Paulson
CLERK

No. 17,108

ILLIWAY TELEVISION, INC., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,110

TELE-VIEWS NEWS CO., INC., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

On Consolidated Appeal From A Decision Of The
Federal Communications Commission

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

No. 17,102

MIDLAND BROADCASTING CO.,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

No. 17,108

ILLIWAY TELEVISION, INC.,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

No. 17,110

TELE-VIEWS NEWS CO., INC.,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

**On Consolidated Appeal From A Decision Of The
Federal Communications Commission**

SUPPLEMENTAL JOINT APPENDIX

COMMUNITY TELECASTING CORP. ET AL., DOCKETS Nos. 12501, 12503, 12504, 12505, AND 12506:

Application of Moline Television Corp. for construction permit for a new television broadcast station to operate on channel 8 in Moline, Ill.: granted. Competing applications for the same authority of Community Telecasting Corp., Tele-Views News Co., Inc., Midland Broadcasting Co., and Illiway Television, Inc.; denied.

Section 309(b) of the act.—Comparative qualification of applicants considered.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON 25, D.C.

In re Applications of
COMMUNITY TELECASTING CORP., MOLINE, ILL.
TELE-VIEWS NEWS CO., INC., MOLINE, ILL.
MIDLAND BROADCASTING CO., MOLINE, ILL.
ILLIWAY TELEVISION, INC., MOLINE, ILL.
MOLINE TELEVISION CORP., MOLINE, ILL.
For Construction Permits for New Television Broadcast Stations

Docket No. 12501
File No. BPCT-2339
Docket No. 12503
File No. BPCT-2367
Docket No. 12504
File No. BPCT-2370
Docket No. 12505
File No. BPCT-2428
Docket No. 12506
File No. BPCT-2440

APPEARANCES

David S. Stevens and *Joseph M. Kittner* (McKenna & Wilkinson), Tele-Views News Co., Inc.; *Vincent B. Welch* and *Donald E. Bilger* (Welch, Mott & Morgan), for Midland Broadcasting Co.; *Reed Miller* and *Paul A. Porter* (Arnold, Fortas & Porter), for Community Telecasting Corp.; *Thomas N. Dowd* and *William S. Green* (Pierson, Ball & Dowd), for Moline Television Corp.; *Paul Dobin* and *Stanley B. Cohen* (Cohn & Marks), for Illiway Television, Inc.; and *Ray Paul* and *Robert J. Rawson*, for the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted May 16, 1962)

BY THE COMMISSION: CHAIRMAN MINOW ABSENT; COMMISSIONER CRAVEN NOT PARTICIPATING; COMMISSIONER FORD DISSENTING AND ISSUING A STATEMENT; COMMISSIONER CROSS DISSENTING.

PRELIMINARY STATEMENT

1. This proceeding involves the applications of Community Telecasting Corp. (Community), Tele-Views News Co., Inc. (Tele-Views),

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Midland Broadcasting Co. (Midland), Illiway Television, Inc. (Illiway), and Moline Television Corp. (Moline TV), for a new television station on channel 8 with main studios in Moline, Ill. By order, released June 30, 1958, the Commission found Community, Midland, and Moline basically qualified. Tele-Views was found legally and technically qualified, and Illiway was found legally and financially qualified, and technically qualified except for overlap between the proposed station and WREX-TV, Rockford, Ill. Issues 2 and 5 related to such problems. These issues were determined in conclusions 1 and 2 of the initial decision. Issues 1 and 3 were rendered moot by dismissal of other applications. Issues 4 and 6 were directed to the comparative merits of the applicants. The initial decision of Hearing Examiner Charles J. Frederick, released April 28, 1960 (FCC 60D-52), proposed a grant of the Community application, based on the superiority of Community in the comparative criteria of local residence, civic participation, broadcast experience, integration of ownership and management, and programing (because of educational programs). He also found that Community shared preference with certain applicants over others in "diversification of business interests" and "diversification of media of mass communications." Exceptions to the initial decision were filed by each of the applicants and the Broadcast Bureau. Reply briefs were filed by Community, Midland, Illiway, and Moline TV.

2. Oral argument was held before the Commission en banc on June 2, 1961. On August 16, 1961, Illiway petitioned for leave to amend its application to reflect the death of J. Paul Madison and the substitution of Helen Louise Madison, his wife, in his lieu as stockholder and stock subscriber. The fact was also reported to the Commission at oral argument. Since this change will result in no advantage to Illiway and was caused by events beyond this applicant's control, good cause appears to exist for a grant of the petition. Similarly, Moline petitioned on February 27, 1962, to reflect the death of William Leonard, stockholder, and to substitute his estate sub nom. Audrey Leonard, executrix, the death having been reported to the Commission by letter of September 13, 1961. The petition should be granted. In view of the minuscule stock interest of William Leonard, the Commission notes the substitution but concludes that its effect on the conclusions herein is de minimis. Both petitions will be granted in the ordering clause of this decision.

3. The findings of fact in the initial decision have been considered in light of the exceptions and replies filed, and we adopt them with the modifications noted in our discussion or in the appendix hereto, which contains our rulings on the exceptions to the initial decision. The Commission has also reviewed, in light of the exceptions, the examiner's conclusions which, as pointed out above, led to an ultimate preference for the Community application. The examiner's conclusions are modified to the extent reflected herein.

4. As previously noted, in considering the financial qualifications of Tele-Views and of the overlap problem between the proposed stations and WREX-TV, the Commission specified issues 2 and 5, respectively, in its order of designation. The examiner correctly disposed of such issues in conclusions 1 and 2 of the initial decision, and those conclu-

sions are adopted. In view of the determinations made under these issues, each of the applicants is basically qualified, and the question remaining for determination is which of the applicants is best qualified.

5. We agree with the hearing examiner that no significant differences exist between the applicants in the comparative areas of planning; studios, staffing, and equipment; and policies. Our attention has been drawn to *Suburban Broadcasters*, 30 FCC 1021, 20 R.R. 951, aff'd sub nom. *Patrick Henry et al. v. FCC*, — App. D.C. —, — F. 2d —, — R.R. — (slip opinion March 29, 1962, not yet reported), and *KORD, Inc.*, 31 FCC 85, 21 R.R. 781, both of which allegedly preclude a finding that Moline's program proposals, which are based upon the knowledge of its personnel of the Moline area, reflect the needs of the area. *Suburban* stands for the proposition that an applicant may be required to demonstrate an earnest interest in serving a local community by evidencing a familiarity with its particular needs and an effort to meet them; it does not prescribe the only acceptable methods for satisfying these requirements. Moline's efforts, as shown upon this record, were sufficient. *KORD* involves the continuing responsibility of a licensee to keep abreast of community needs and, therefore, is not applicable here. We are also of the view that no significant differences exist in the area of programing. The hearing examiner concluded that although the programing proposals of each of the applicants are well balanced, a slight preference should be awarded to Community because of its greater emphasis on educational programing. We agree with the hearing examiner that each of the applicants proposes a well-balanced program schedule, but we do not agree that a preference should be awarded solely on the basis of the emphasis placed upon one or more categories of programing. The varying degrees of emphasis are a reflection of the respective applicants' judgments as to the programing needs of the community they propose to serve. Where, as here, no affirmative showing is made either that the judgment of the other applicants is unreliable, or that there is a particular community need requiring a greater than usual emphasis on a given category of programing, any preference awarded on the basis of such emphasis would entail a Commission judgment that one type of programing is to be preferred over another without regard to community need. None of the applicants has a broadcast record, and the minority interests which various stockholders of some of the applicants have in broadcast stations do not provide any basis for comparison in the area of broadcast record.

6. In the area of diversification of media of mass communication, the hearing examiner awarded a preference to Community, Tele-Views, and Midland over Moline and Illiway. While we agree with the examiner's conclusion, we think that the preference awarded the first three over Moline is slight, and the preference over Illiway is only moderate. In connection with Illiway, we have considered the conditional intention of Messrs. Baisch and Guyer to divest themselves of their interests in WREX-TV, Rockford, Ill., in the event of a grant. Moline's inferior showing in this area is attributable solely to the fact that one of its directors owns a majority of the stock in a weekly newspaper with a circulation of 7,000-7,200 in the area east of Moline.

Since this area is served by four daily and two weekly newspapers, with a number of broadcast stations (AM, FM, TV), we attach very slight comparative significance to the ownership of the weekly newspaper by one of Moline's directors. Illiway's moderate demerit in this area is attributable solely to the small minority interests which several of its principals have in widely scattered standard broadcast and television stations; only one of these stations—a standard broadcast station—is located in the Moline area, and a 3.6-percent stockholder of Illiway (but not an officer or director) is a 20-percent stockholder, vice president, and treasurer of that station.

7. We agree with the hearing examiner that Illiway, Community, and Moline share a preference over Midland and Tele-Views in the area of diversification of business interests. The preference is, however, only slight, since a diversity of business interests is represented in all of the applicants.

8. In the area of civic participation, the hearing examiner awarded a preference to Community on the ground that the long, local residence of all of Community's stockholders is reflected in its record of civic participation, and, in support, he mentioned approvingly the fact that each officer and director of Community has a record of occupying positions of responsibility in a variety of civic organizations. The record shows, however, that the local stockholders of all of the applicants are closely identified with the community and have participated in community affairs and activities. We agree with the Broadcast Bureau's view that to grant Community a preference over Tele-Views, Moline, and Illiway would be engaging in a "game of numbers" (i.e., Community's larger number of stockholders would be translated into a preference), and this we have consistently refused to do. In *Tampa Times Co.*, 10 R.R. 77 (1954), we stated (p. 136) that "we do not believe it appropriate to add up the associations of each applicant and award a preference on that basis. The crucial consideration on this point is whether the applicants have demonstrated a familiarity, through such associations, with civic organizations, and thus, civic needs." Except for Midland, we rate the applicants equal in this comparative area; Midland suffers somewhat in comparison chiefly because only its minority stockholders have any record of civic participation in the Moline area.

9. In the area of local residence, the hearing examiner preferred Community over the other applicants because it showed the greatest percentage (100 percent) of local ownership. Tele-Views, though locally owned, was rated below Community because of a stipulation (see par. 7 of the examiner's conclusions) that one of Tele-Views' stockholders would be disregarded in comparing the applicants; this served to reduce Tele-Views' local ownership of stock to 87 percent. Moline is 75 percent locally owned, Illiway 67 percent and Midland 33 percent. Except for Midland, the majority of the stock of each of these applicants is owned by local residents, and the ultimate control which such majority ownership vests in local residents provides assurance of the applicant's continued insight into the ever-changing needs of the area and through such insight provides assurance as to their being met on a continuing basis. Where the stock is 100 percent

locally owned, as in the case of Community and Tele-Views, there is, of course, greater assurance of local control than where some of the stock is owned by nonresidents. It does not follow, however, that an applicant in which a minority of the stock is owned by nonresidents and in which a minority of the officers and directors are nonresidents will not be in the firm control of local residents, and, absent a showing to the contrary, it must be presumed that the minority of nonlocal stockholders and officers and directors will not have control. The presumption of retention of control by local residents who hold the majority of the stock, and constitute a majority of the members of the officers and directors, becomes stronger, of course, as the percentage of nonresident stock interest declines and as the number of nonresident stockholders in principal offices diminishes. However, these differences in degree in the weight which can be accorded to the presumption of local control based upon local ownership of a substantial majority of the stock do not provide any basis for awarding substantial preferences as between applicants; only very slight preferences can be awarded on this basis. In the instant proceeding, Community, Tele-Views, Illiway, and Moline—in all of which either all or a substantial majority of the stock is locally owned, and in which a majority of the directors and officers are local residents—are entitled to a substantial preference over Midland, only one-third of the stock of which is locally owned. As between the remaining applicants, only very slight preferences can be awarded: first, Community; second, Tele-Views; third, Moline; fourth, Illiway.

10. In the area of integration of ownership and management, the examiner preferred Community, rated Midland second, and the remaining applicants were not listed in order of preference. The basis for the examiner's conclusion was that Community would be 100 percent integrated, and "partially on the basis of Community's local experience and residence (hence, more meaningful integration)." The examiner's conclusion that Community would be 100 percent integrated is based upon the fact that all of the stockholders who are not officers or directors will each serve in an advisory capacity with respect to one or more aspects of the station's operations. Except for Midland, all of the other applicants have also devised plans for such stockholder participation, but in the case of none of these other applicants would all of the stockholders participate.

11. Little weight, if any, can be attached to the fact that provision has been made for the participation by stockholders as advisers or members of one or more advisory committees. Their functions and depth of participation are too indefinite to provide any basis for a preference as between applicants. Moreover, the stockholders to whom such roles have been assigned have in the overwhelming majority of instances no prior experience in station operation and management, and the time which such stockholders propose to devote to their role is so limited that there is little likelihood that they can acquire sufficient familiarity with the problems of station operation and management to enable them to make a responsible and meaningful contribution. Indeed, there is a real risk that the participation by such stockholders may never rise above the level of the superficial, and in-

stead of providing a basis for a preference in the area of integration of ownership and management, an applicant's reliance on such participation might well serve to detract from the showing in this area. For these reasons, the desultory participation by stockholders in various advisory capacities will be disregarded in comparing the applicants.

12. In the area of integration of ownership and management, Tele-Views makes the weakest showing, since none of its officers or stockholders will devote a substantial portion of their time to station operation. Their participation is limited to advising the station's general manager. The next weakest showing in this comparative area is that made by Illiway; only two of its stockholders (one a vice president, the other without an elective office), with a combined stock interest of 5.5 percent, will devote full time to the station. While other officers and stockholders of Illiway will participate in station operation, their participation, except for that of its vice president, Bettendorf, is limited to a few hours a week up to two 1-hour days per week; Bettendorf (a 6.8-percent stockholder) would devote one-third of his time to the station, and he would advise the general manager as to public-service programs and act in a liaison capacity. Moline's president, Schreiber, with a 10-percent stock interest, will devote full time to the station. Community's vice president, Wodlinger, also, with a 10-percent stock interest, will likewise devote full time to the station. None of the other officers or stockholders of Moline or Community propose to devote full time to station operation. Community¹ is, however, entitled to a degree of preference over Moline because more of its remaining officers and stockholders will participate for 10 hours a week or more in station management and operation than will the other officers and stockholders of Moline,² and the aggregate stock interest of Community's participating officers and stockholders exceeds that owned by Moline's participating officers and stockholders. The remaining applicant, Midland, makes the strongest showing in the comparative area of integration of ownership and management, and it is entitled to a substantial preference. Officers and stockholders with a combined stock interest of 67 percent in Midland would devote full time to the station, and all of its other officers and stockholders would each devote a minimum of 20 hours per week to station operation and management.

13. In the comparative area of broadcast experience, the examiner preferred Community over the other applicants. The apparent basis of the preference was that the experience on which Community relies was gained in the area which its proposed station would serve. The examiner's findings show that Wodlinger, a 10-percent stockholder and the vice president and general manager of Community, has been employed in broadcasting from 1948 to 1958. While Wodlinger has participated in various phases of broadcasting operations, his principal activity was sales, and he was sales manager of WOC-TV-AM-FM in Davenport, Iowa, from 1950 to 1958. Midland's broadcast

¹ Seven stockholders of Community, in addition to Wodlinger, will devote 10 or more hours a week to the station. In the aggregate, they hold 71 percent of the stock.

² Three stockholders of Moline, in addition to Schreiber, will devote 10 or more hours a week to the station. These three have a combined stock interest of 34 percent.

experience consists primarily of the experience gained by members of the Atlass family in Chicago. H. Leslie Atlass, the president and 37-percent stockholder, was born in 1919. He was for a brief period the head of the Columbia Broadcasting System's television department in Chicago in 1945. When the activities of this department were suspended, he was employed in sales for a standard broadcast station in Chicago until 1948; and from 1948 to 1956, he was employed by standard broadcast station WIND in Chicago, serving as program director and subsequently also as treasurer and director of the licensee of that station. Frank Atlass II, a 15-percent stockholder, director, and proposed program manager of Community, was born in 1931. He has been employed in broadcasting since 1950, working for the Columbia Broadcasting System and subsequently for station WBBM-TV, Chicago, of which he is now the sales manager. His experience has been chiefly in sales except for (a) his work as writer-producer of a weekly program presented from May 4, 1957, to January 1958 for the Columbia Broadcasting System television network, and (b) a 2-year period in which he was an executive producer and program manager of station WBBM-TV. Harriet Jane Atlass, a director, 15-percent stockholder, proposed public affairs director, was born in 1933. Her experience in broadcasting began in 1955, and she has produced numerous programs, concentrating chiefly on public affairs. She is presently public affairs director of stations WBBM and WBBM-TV. In addition to these members of the Atlass family, John H. Lujack, a 3.9-percent stockholder and proposed sports director for Midland, has had some experience in televising football games and sports programs.

14. None of Tele-Views' stockholders have had any broadcast experience. Two of Illiway's stockholders who would be active in the operation of its station have had broadcast experience. Joseph M. Baisch, executive vice president of Illiway, has been general manager of station WREX-TV, Rockford, Ill., since 1954. As general manager, he supervises all of the activities and operations of that station. The broadcast experience of Illiway's proposed station manager, John T. Mazzie, a 1-percent stockholder, dates back to 1947. From that year until 1952, he was employed in various capacities by WOW-TV, Omaha, Nebr., and in 1952 he became executive producer of that station. Since 1954, he has been program director of WREX-TV. In that capacity, he is responsible for the actual creation and production of all programs.

15. Moline's president, Schreiber, who owns 10 percent of the stock and would devote full time to the management of the station, has had broadcast experience extending back to 1931, when he became public relations director for station WGN, Chicago. He coordinated the activities of standard broadcast station WGN with the Mutual Broadcasting System, which WGN helped establish. Beginning in 1941 he served in various executive capacities with WGN. He was the general manager for WGN-AM-TV for about 15 years, concluding his service with those stations in 1956. He has been a director of WPIX, Inc., New York City, and a director of the Mutual Broadcasting System.

While at WGN, Schreiber stressed the development of local news coverage and public affairs programs. He developed a music staff, and presented live musical programs. A program for preschool children, presented by a representative of the Chicago Board of Education, was developed. Talks by authorities in the fields of agriculture and management were presented daily. In addition to Schreiber, several other stockholders of Moline have had intermittent and part-time association with broadcasting, but their experience is not significant for comparative purposes.

16. We do not agree with the examiner that Community should be preferred in the area of broadcast experience. It is evident that Schreiber's experience has not only extended over a longer period of time than that of any of the others, but the scope of his activities and responsibility has been as broad, and in most instances, broader than that of any of the others. While the members of the Atlass family who would be associated with Midland have had varied experience, none of them has had overall responsibility for station management. The experience of Frank and Harriet, compared to that of Schreiber, has been gained in a relatively brief period of time; and H. Leslie has been active in broadcasting for only half as long as Schreiber. Moreover, although H. Leslie has had more substantial experience than either Frank or Harriet, very little of it has been in the field of television; Schreiber, on the other hand, was for 10 years the general manager of a television station, and, as the examiner found, guided the development of the station from its infancy. The experience of Illiway's Baisch and Mazzie includes that of general manager (not included in the broadcast experience of the Atlases), and their experience in program production has been of a longer duration and more concentrated than that of the Atlases. The experience of the latter has been greater in sales and covers a larger period of time. As between Midland and Illiway, the latter is to be preferred. However, the combined experience of Illiway's Baisch and Mazzie does not match that of Schreiber. The latter's experience as general manager and in broadcasting generally has been far more extensive in point of time, and, though Schreiber has not specialized in programing as has Mazzie, he had as general manager overall responsibility for the production and presentation of locally originated programs; Mazzie's experience in producing such programs has been far more limited. Community's Wodlinger has not had experience comparable to that of the Atlases, Schreiber, or of Baisch and Mazzie; his broadcasting career has been primarily devoted to sales. Hence, Community will be rated fourth in the area of broadcast experience. We disagree with the examiner that Wodlinger's experience in sales in the Moline area entitles Community to a preference over all or any of the three applicants thus far considered; whatever significance may be attributed to experience in the locale cannot outweigh the very limited nature of such broadcast experience compared to that represented by Moline, Illiway, and Midland. Tele-Views' principals have no broadcast experience, and hence Tele-Views' rank is last in the area of broadcast experience.

CONCLUSION

17. On the basis of the showing made by each of the applicants under the various criteria, it is the Commission's judgment that Moline has made a better overall showing than any of the other applicants. It has a pronounced superiority over Tele-Views in the areas of broadcast experience and integration of ownership and management, and its superiority in these areas far outweighs the slight preference accorded to Tele-Views in the area of local residence and the very slight preference in the area of diversification of ownership of mass media of communications. Moline is likewise to be preferred over Midland. Though the latter makes a superior showing in the area of integration of ownership and management, with a very slight added preference in the area of diversification of mass media, it is not controlled by local residents, as is Moline, and its broadcast experience does not match that of Moline. Moline also makes a better showing than Illiway. Though the differences between these two applicants are small, Moline made a better showing in each of the areas in which differences were found to be present. Moline also makes a better showing than Community. It makes a substantially better showing than Community in the area of broadcast experience. While, as we have indicated, Community makes a somewhat better showing in the areas of integration, local residence, and diversification of mass media, the differences between Moline and Community in these areas are slight and do not, in the Commission's judgment, outweigh the superiority of Moline in the area of broadcast experience.

Other Matters

18. There remains for our consideration a "Petition to Reopen the Record, Remand the Proceeding to the Examiner for Further Hearing, and for Reargument" filed by Community on January 30, 1962. The petition addresses itself to certain alleged changes in the status of the several competitors of Community, claimed to have occurred since the closing of the record, and argued by Community to be of such magnitude as to warrant reopening of same. With those allegations concerning Tele-Views, Midland, and Illiway, we shall not concern ourselves. In this decision, the Commission has selected Moline. The comparative qualifications of the losers could affect such selection only if the petition concerned factors potentially improving their status. Our examination of the petition reveals that determinations under the suggestion made by Community could only maintain their present comparative standing or weaken it. Hence, the petition insofar as the three named applicants are concerned will be denied. The petition, insofar as it concerns Moline, is, of course, on a different standing. The allegations, if sufficiently deleterious and proved, might cause the Commission to change its ultimate determination in this proceeding. We shall, therefore, examine and rule upon them in some detail.

19. It is first alleged that William T. Leonard, 1/2-percent stockholder, director, and member of stockholder committee,¹ died on

¹ Initial decision, findings 432, 431, 444, 457(m), 469(h).

July 29, 1961, that petitioner cannot find notification to the Commission by Moline, that "It can only be surmised that Moline has declined to advise for fear of 'rocking the boat' " and " * * * can * * * have no valid excuse for not reporting. * * *" and that the record should be reopened to evaluate Moline anew absent Leonard. It is first to be noted that Moline *did* notify the Commission by letter received on September 13, 1961 (4 months before subject petition was filed). While accepting Community's statement that for some reason it was unable to find the report in question, the Commission prefers that counsel confine themselves to a flat statement thereof rather than indulging in speculation, casting unwarranted aspersions, and impugning the good faith of their adversaries. Turning to the merits, it is to be noted that Mr. Leonard's interest was extremely small. Insofar as the local residence criterion (par. 9, *supra*) is concerned, petitioner was ranked first and Moline third, and a reevaluation concerning a 1½-percent stockholder would scarcely influence this. The Commission's evaluation of the stockholder committees (par. 11, *supra*) eliminates any importance the deceased may have had as a member of such committee.⁴ The advice of the deceased⁵ has already been furnished the applicant. It is thus apparent that Mr. Leonard's potential services reflected in finding 469(h) of the initial decision would be the only operative factor in our decision affected by his death. This, as stated in paragraph 2, *supra*, we consider *de minimis* and decline to reopen on this ground.

20. Next, contended by Community, is that the Commission should reopen to consider the tactics of Moline (in conjunction with Illiway) in the use of private detectives to interview persons concerning the background and experience of Wodlinger, a Community principal. Implicit is the idea that the detectives were employed to suborn falsehoods concerning Wodlinger. The exhibits submitted have been scrupulously examined with this in mind. They fail utterly to bear out such implication. Some statements favorable to Wodlinger were submitted by persons who admit that they got the "impression" that the investigators were favorable to Wodlinger. Aside from the fact that the original statements did Wodlinger no harm, we are not impressed by the testimony of a person who, in effect, confesses that he tailors his utterance to suit his interrogator. The statement of one Anderson is offered to show that a statement submitted in September 1960⁶ was procured by private investigators who did not faithfully render into written form the conversation which Anderson had with them. To further confuse the matter, Anderson denies having signed the statement at all, although Community concedes that he did so. Comparison of what Anderson's signed statement says with what he says he meant fails to reveal any significant difference. It is not to be expected that an interviewer will transcribe every word of an interviewee (unless the document purports to be a *verbatim* transcript, which this did not) and that is the purpose of the interviewee's signature; i.e., to verify the *essential* correctness of the document. In

⁴ *Ibid.*, finding 421.

⁵ *Ibid.*, finding 457(m).

⁶ Moline/Illiway joint petition to reopen record, memorandum opinion and order, Dec. 4, 1960, FCC 60-1459, Mimeo 97341.

sum, we feel that Wodlinger's background and experience in the initial decision, findings 17-27, have fairly reflected all that might have been derived from the most favorable form of the Anderson statement. The allegations concerning Anderson and the private investigators, insofar as they are intelligible, fail to prove any wrongdoing. Lastly, the statement of one Bob Brown submitted in 1960 is vigorously controverted at this time. It is derogatory to Wodlinger but, regardless of its truth, there is nothing to link it to the private investigators. Reopening on the ground of improper activity by Moline-employed private detectives will be refused.

21. Community further alleges that Moline's studio site is now unavailable, a fact conceded by Moline, and that the record should be reopened to explore whether a studio site will be available and to determine why Moline did not report the loss of its commitment. As to the loss of the studio site itself, the Commission has recognized in the past that good-faith commitments on real property cannot be expected to remain in being forever. This application was designated nearly 4 years ago and the site remained available, for aught that appears, until June 28, 1961,⁷ the very day on which the Commission announced its instruction in favor of Moline,⁸ and 26 days after oral argument. We do not know the identity of the interests involved in the Kroger Co., grantee, but the general circumstances fail to convince us that Moline has been guilty of bad faith. In any event, as in *Westinghouse Broadcasting Co.*, 10 R.R. 878 (1955), we refuse to assume that no suitable site can be found in the Moline area. As Moline points out, the studio site was of no decisional significance⁹ so that a reopening and reevaluation, short of a finding that no site at all is available to Moline, would be unproductive. While Moline should have reported the loss of its site, the late state of the proceeding at which such loss occurred renders it a minor dereliction. The petition will be denied on the grounds discussed in this paragraph.

22. Lastly, we consider Community's allegation that Moline has in some manner violated 47 U.S.C. 317 and 508. Not to burden unduly this document, it appears that Waxenberg, a Moline principal,¹⁰ is also president of a grocery supermarket chain, and a subsidiary thereof, an advertising agency. The advertising agency has certain contractual relations with KROS-FM, Clinton, Iowa, for over-the-air advertising and background music for the supermarkets. The intendment appears to be that, since the contractual relation amounts to virtually a lease of all of KROS-FM's time, there has been an unlawful transfer of control to Waxenberg. The brief answer to this contention is that if any violation lies in these circumstances (a matter on which we refrain from opinion), the violation would be KROS-FM's. Next, it is contended that the contractual relationship is a "connection" with an FM station of the type calling for report under question 19(a), section II, FCC Form 301, and that Moline failed to report such. If this be so, then every one-time buyer of a spot announcement has a reportable "connection," differing from the instant one only in magnitude and not in

⁷ Warrant deed, exhibit B, petition of Community.

⁸ Public notice 151 was issued on June 29, 1961.

⁹ Initial decision, conclusion 28.

¹⁰ Initial decision, findings 429, 432, and 437(T).

kind. To state such a proposition is to demonstrate its absurdity. The ultimate contention is that Moline, Waxenberg, the supermarket chain, the advertising agency, and KROS-FM have jointly violated 47 U.S.C. 317 and 508 in that Waxenberg is a principal of Moline, president of the grocery chain, and president of the advertising agency; that KROS-FM by contract with Valley furnishes background music for the supermarkets as well as a public FM broadcast service; and that customary commercial announcements are interspersed "plugging" either (a) brand name products sold at the various supermarkets, or (b) generically identified (e.g., "garden-fresh vegetables") items "from your Eagle Food Shopping Center [the supermarket]." It is further alleged that the supermarkets may make such arrangements as they desire with the food suppliers without liability for any payment to KROS-FM except the sum certain provided in the contract. Thus, contends Community, the food suppliers (i.e., the wholesale distributors of groceries which are the supply depots for the retail supermarkets) are really paying KROS-FM and should be identified as so doing. We cannot agree. The contract in question is clearly between KROS-FM and Valley, and provides for payment of a sum certain for specified services. For a grocery store operating an advertising campaign to receive reimbursement in whole, in part, or not at all from its wholesale supplier (or even the retail outlet's making a profit on the arrangement), does not make the wholesaler a client of KROS-FM. He is insulated therefrom by Valley, the agent, and the retail grocery outlet. Agency and corporation law would be meaningless were we to hold otherwise. In addition, two of the three sample announcements submitted in Community's reply clearly announce the name of the commercial product involved, thereby fully complying with the letter and spirit of 47 CFR 3.289(e) and our public notice of October 10, 1950.¹¹ The third announcement which advises the public to buy "garden-fresh vegetables from your Eagle Food Shopping Center," while it does not contain a brand name, is likewise, in our opinion, open to no reasonable objection. The purpose of the entire statutory and rule mandate, to insure that the public is informed that it is hearing a commercial announcement and not an opinion of the station or announcer, and to know further the identity of the commercial entity which urges it to buy, is being fully complied with in our opinion. The petition alleging nothing of substance on this ground will be denied for the reasons stated.

23. As indicated in paragraph 2, *supra*, there are before the Commission petitions requesting leave to amend applications to reflect the deaths of J. Paul Madison and the substitution of Helen Louise Madison, his wife, in his lieu as stockholder and stock subscriber, and the death of William T. Leonard, and the substitution of his estate sub nom. Audrey Leonard, executrix. Although the subjects of these petitions involve only formal matters, not affecting in any way the applicants' standing or the final determination of this proceeding, for the sake of the orderly disposition of Commission business,

¹¹ FCC 50-12-7, Mimeo 54760.

It is ordered, This 16th day of May 1962, that the petition of August 16, 1961, of Illiway Television, Inc., for leave to amend its application to substitute Helen Louise Madison for J. Paul Madison as a stockholder and stock subscriber, *Is granted*; and

It is further ordered, That the petition of February 27, 1962, of Moline Television Corp. for leave to amend its application to substitute estate of William T. Leonard, sub nom. Audrey Leonard, executrix, for William T. Leonard as a stockholder *Is granted*; and

It is further ordered, That the petition of Community Telecasting Corp. to reopen the record, filed January 30, 1962, and supplemented February 2, 1962, *Is denied*; and

It is further ordered, That the application of Moline Television Corp., for a permit to construct a new television station to operate on channel 8 in Moline, Ill., *Is granted*, subject to the condition that no construction be commenced prior to further order of the Commission to be issued in the event that channel 8 is retained in Davenport, Iowa-Rock Island-Moline, Ill. (see docket No. 11749; order, dated May 12, 1959, in *WIRL Television Co. v. FCC* (cases Nos. 13768, 13769, 13912, C.A.D.C.)); and to the further condition that the permit be automatically rescinded if the channel be not so retained and the applications of Community Telecasting Corp., Tele-Views News Co., Inc., Midland Broadcasting Co., and Illiway Television, Inc., *Are denied*.

APPENDIX

RULINGS ON EXCEPTIONS TO THE INITIAL DECISION

Exceptions of Community Telecasting Corp.

<i>Exception No.</i>	<i>Ruling</i>
1, 2, 3, 4, 24, 33, 39, 40, 46, 50, 58, 113, 129, 131-135, 144.	Granted, and the initial decision is modified to that extent.
5-23, 25-28, 30-32, 34-36, 38, 41, 45, 55-57, 59-87, 89-97, 99-106, 110-112, 114-123, 130, 136-143, 145, 146, 149, 151-153, 156(1).	Denied. The examiner's findings adequately reflect the matters involved, and the additional facts, even if substantially supported by the record, would be of cumulative effect, without any decisional significance.
29-----	Denied. The examiner's rejection of evidence concerning Community's ability to produce occasional color television programs is sustained because this applicant does not propose to offer color programs on any regular basis.
37-----	Granted, and the initial decision is modified accordingly.
42-43, 47-49, 52-54-----	Denied. The examiner's findings here questioned are not contrary to the record, and the proposed changes have no persuasive basis in the record.
44-----	Granted, and the initial decision is modified by eliminating from finding 168 the last 5 words: "and has relied upon them."
51-----	Granted to the extent that the explanation in finding 213 for the item \$45,024 should be "Remote truck, furniture and fixtures, miscellaneous," instead of "Professional fees." The rest of the exception is denied as relating to matters which are either unsupported by the record or are of no decisional significance.

Exceptions of Community Telecasting Corp.—Continued

<i>Exception No.</i>	<i>Ruling</i>
88, 96, 100, 147, 150, 154-155, 156 (2), (3) and (4), 157-160.	Denied. Argumentative—attacking conclusions and inferences from facts, as to which reasonable minds may differ.
148	Denied. Inapplicable.

Exceptions of Tele-Views News Co., Inc.

<i>Exception No.</i>	<i>Ruling</i>
1, 3-5	Denied. Immaterial in view of the decision <i>herein</i> .
2	Denied. The footnote accurately summarizes the record. The sought "finding" is a melange of testimonial recapitulation and conclusions.
6, 17	Denied. Immaterial. <i>Sarkes Torsion</i> cited by exceptor stands for the converse of exceptor's proposition.
7	Denied. The plan—not the effort—is the significant factor.
8	Denied. No disadvantage has accrued when the quoted words are read in context.
9	Denied in view of conclusion 9 herein.
10	Denied. "Outstanding" and "active," etc., are not synonyms.
11	Denied. See conclusion 8 herein.
12-16, 18, 19	Denied. On the basis of the findings, the Commission reaches different conclusions, those proposed by exceptor not being inescapable.

Exceptions of Illinoy Television, Inc.

<i>Exception No.</i>	<i>Ruling</i>
1	Denied as of no decisional significance.
2	Denied. The examiner's findings are supported by the record.
3-6, 8-12, 14-23, 25-26, 29-31, 33-38.	Denied. The examiner adequately discussed these matters and the proposed modification would be of cumulative rather than decisional significance.
7	Denied. The record supports footnote 4.
39, 41, 42	Granted in substance as reflected by the discussion and conclusions of this decision.
43, 45-47	Denied in the light of the decision reached <i>herein</i> .
13	Denied. Such finding would be immaterial.
24	Denied. The Commission agrees with the examiner's finding.
27, 28	Denied. Remarks under these numbers are not exceptions.
32	Denied. The absence of a contrary affirmative finding is an implied negative finding.
40, 44, 48	Denied. 47 CFR 1.154 not complied with.
49, 50	Denied. The Commission concludes differently.

Exceptions of Moline Television Corp.

<i>Exception No.</i>	<i>Ruling</i>
3, 22, 29	Denied. The examiner's findings are substantially supported by the record and they are not misleading. A lack of detailed evaluation of the evidence, evidenced by a general mechanical adoption of proposed findings, would be "basic and fatal error," but such adoption <i>per se</i> (provided the proposed finding be accurate) is not.

Exceptions of Moline Television Corp.—Continued

<i>Exception No.</i>	<i>Ruling</i>
2, 5, 7-17, 20, 21, 23, 24, 30-42, 44-52, 54-71.	Denied. The examiner's findings adequately reflect the matters involved, and the additional facts, even if supported by the record, would have cumulative rather than decisional effect in the light of our decision herein.
4 -----	Granted. Findings concerning the religious beliefs of individuals, unrelated to any other activities, are irrelevant. Accordingly, such statements in findings 56, 74, and 77 of the initial decision are deleted as serving no decisional purpose.
6 -----	Granted, and the initial decision is modified by eliminating the first sentence from finding 19.
25-27 -----	Granted, and the initial decision is modified accordingly.
18, 19, 28, 53 -----	Granted in substance, insofar as the record discloses that the written surveys and/or personal contacts of Community Telecasting Corp., Tele-Views News Co., and Illiway to a considerable extent were actually completed after the date of filing of their respective program proposals, the initial decision is modified to that extent. Denied otherwise, as cumulative and of no decisional significance.
72, 73 -----	Granted, and the respective findings in the initial decision are modified to the extent that, except for Midland Broadcasting Co., the other 4 applicants are to be considered substantially equal in the area of local residence and as to civic participation, only a slight decisional preference to Community Telecasting Corp. is warranted in this criterion.
74, 75-78, 80 (in part, as to examiner's conclusion 31).	Denied. Argumentative—attacking conclusions and inferences from facts, as to which reasonable minds may differ.
79, 80 (in part, as to examiner's conclusion 31).	Granted, for the reasons made clear in the decision herein.

Exceptions of Midland Broadcasting Co.

<i>Exception No.</i>	<i>Ruling</i>
1-6 -----	Denied. The factual findings sought are already reflected in the record, and the conclusions sought are not compelled from such findings.

Exceptions of the Broadcast Bureau

<i>Exception No.</i>	<i>Ruling</i>
1 -----	Granted, and finding 59 of the initial decision is modified to show that Clemens A. Werner, a 2-percent stockholder in Community, is a 46-percent stockholder in Walcott Trust & Savings Bank, Walcott, Iowa.
2-5, 7, 9 -----	Granted, as reflected by the discussion and conclusions of this decision.
6, 8 -----	Denied, for reasons stated in the decision.

DISSENTING STATEMENT OF COMMISSIONER FREDERICK W. FORD

The decision of the majority seems to me to place an entirely unwarranted importance on the factor of broadcast experience and does not, therefore, present an adequate basis for granting the application of Moline Television Corp.

The decision recognizes that Community is to be preferred over Moline as to local residence, integration of ownership with management, and diversification of ownership in media of mass communication. Although the broadcast experience of neither is particularly extensive, the applicants seem to me to be quite comparable in this area, with the examiner in fact preferring Community. If any difference in favor of Moline can be justified from the record, it is hardly enough to overcome Community's acknowledged superiority in other areas of comparison.

More importantly, the decision accords to the criterion of broadcast experience an importance which I feel would be erroneous even if a substantial margin of superiority were shown to exist. The Commission has in the past recognized that the opportunity of the newcomer to enter the field would be seriously curtailed if broadcast experience were to be regarded as controlling. *Scripps-Howard Radio, Inc.*, 4 R.R. 525; *McClatchy Broadcasting Co.*, 9 R.R. 1190. Moreover, lack of experience may be only a temporary handicap since it can be removed with the passage of time. On the other hand, local residence and integration of ownership with management carry with them an indication that in the long run the station will be operated in the best interests of the community. I am not persuaded that these factors should be subordinated as they have been in this decision.

This is admittedly a close case, but as indicated by the foregoing I feel on balance that Community is entitled to the grant. In reaching this decision I am persuaded to a considerable degree by the fact that the examiner who presided at the hearing rendered a decision strongly favorable to Community. While this obviously does not preclude the Commission from reaching a different result, the examiner's recommendation is nevertheless a part of the record which the Commission must consider. Since our choice lies between several well-qualified applicants with little margin of difference between them and since none of the parties has demonstrated substantial error in the initial decision, I regard the examiner's recommendation as the determinative factor. Accordingly, I would grant Community's application.

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON 25, D.C.

In re Applications of
COMMUNITY TELECASTING CORP., MOLINE, ILL.

TELE-VIEWS NEWS CO., INC., MOLINE, ILL.

MIDLAND BROADCASTING CO., MOLINE, ILL.

ILLIWAY TELEVISION, INC., MOLINE, ILL.

MOLINE TELEVISION CORP., MOLINE, ILL.
For Construction Permits for New Tele-
vision Broadcast Stations

Docket No. 12501
File No. BPCT-2339
Docket No. 12503
File No. BPCT-2367
Docket No. 12504
File No. BPCT-2370
Docket No. 12505
File No. BPCT-2428
Docket No. 12506
File No. BPCT-2440

APPEARANCES

David S. Stevens and Joseph M. Kittner (McKenna & Wilkinson), for Tele-Views News Co., Inc.; Vincent B. Welch and Donald E. Bilger (Welch, Mott & Morgan), for Midland Broadcasting Co.; Reed Miller and Paul A. Porter (Arnold, Fortas & Porter), for Community Telecasting Corp.; Thomas N. Dowd and William S. Green (Pierson, Ball & Dowd), for Moline Television Corp.; Paul Dobin and Stanley B. Cohen (Cohn & Marks), for Illiway Television, Inc.; and Ray Paul and Robert J. Rawson, for Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER CHARLES J. FREDERICK

(Adopted April 22, 1960)

PRELIMINARY STATEMENT

1. This proceeding involves five competing applications for the use of television channel 8 in Moline, Ill., only one of which may be granted. The applications were designated for consolidated hearing by an order released on June 30, 1958. The issues upon which the hearing was held were designated by the Commission in said order to be as follows:

1. . . .

2. To determine whether a grant of the application of Illiway Television, Inc., would be consistent with the provisions of section 3.636(a)(1) of the rules, in view of the overlap which would result between the proposed station and station WREX-TV, Rockford, Ill.

3. . . .

4. To determine on a comparative basis which of the operations proposed in the above-captioned applications would best serve the public interest, con-

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venience, and necessity in light of the record made with respect to the significant differences among the applicants as to—

a. The background and experience of each having a bearing on its ability to own and operate the proposed television broadcast station.

b. The proposals of each with respect to the management and operation of the proposed television broadcast stations.

c. The programming service proposed in each of the above-captioned applications.

5. To determine whether Tele-Views News Co., Inc., is financially qualified to construct, own, and operate the proposed television broadcast station.¹

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

FINDINGS OF FACT

The Communities Involved

2. The evidentiary hearing for the taking of testimony began on January 26, 1959. The record was closed September 24, 1959.

3. The metropolitan area now popularly known as the "Quint Cities" was once, and is still often referred to as the "Tri-Cities"; namely, Davenport-Rock Island-Moline. As East Moline grew, the area was dubbed the "Quad Cities" and, with the growth of Bettendorf, Iowa—the "Quint Cities." In addition, nearby Silvis and Milan in Illinois and Riverdale in Iowa are developing toward becoming integral parts of the metropolitan complex. The Mississippi River separates the communities in the Iowa sector of the metropolitan area, which lie in Scott County, Iowa, from the communities in the Illinois sector of the metropolitan area, which lie in Rock Island County, Ill. The communities are connected by three automobile bridges across the Mississippi River which annually shuttle more than 14 million cars. Recognized as a single metropolitan area by the U.S. census, the area currently has a combined population of 267,100 persons, the third ranking market in Illinois and ahead of the largest single market in Iowa, the capital city of Des Moines. The area's population is divided with 155,700 people in Scott County, Iowa, and 151,400 in Rock Island County, Ill.

4. The Quint City area contains the Nation's greatest concentration of farm equipment factories, with 32 percent of the industrial payroll related to the production of farm equipment. These factories include Deere & Co., International Harvester, and J. I. Case Co. There is also an Aluminum Co. of America plant and a Ralston Purina plant among the more than 300 industrial plants in the area. The Quint Cities lie in the center of one of the Nation's finest farming areas.

5. In addition to its private industrial and farm importance, the Quint Cities are the home of the Rock Island Arsenal, the Government's largest inland arsenal, lying on an island in the Mississippi between the major cities on the Iowa and Illinois shores. Covering about 1,400 acres, the arsenal is the headquarters for the Ordnance Weapons Command and the District Corps of Engineers. During World War

¹ Issue No. 5 was added by the Commission by memorandum opinion and order, released Feb. 5, 1959, granting in part a petition to enlarge issues filed by Community Telecasting Corp. Issues 1 and 2, not quoted above, became moot by the dismissal of the applications of KSTT Telecasting Co. and Public Service Broadcasting Co. A third applicant, Iowa-Illinois Television Co., also dismissed its application.

II, the arsenal employed upwards of 20,000 people and is still an important stabilizing factor in the area's economy. In 1957 the arsenal employed 5,200 military and civilian personnel, and in 1958 was the third largest employer in the area with an annual payroll of \$28 million. In addition, the Ordnance Corps spends some \$2 million annually in the area for procurement of materials and services. The arsenal is responsible for a growing volume of the Nation's missile program, including the manufacture of the Nike-Hercules launcher.

6. In the area are 59 public grade schools, 18 parochial grade schools, 6 junior high schools, 4 senior high schools, 3 business colleges, 1 parochial high school, 3 private girls' schools—Villa De Chantal, Immaculate Conception, and St. Katherine's, the St. Ambrose Academy for boys, and 4 colleges—Augustana, Marycrest, St. Ambrose, and Moline Community College. The Palmer School of Chiropractic is also located in Davenport. There are several large auditoriums in the Quint Cities, while Davenport maintains a public museum and municipal art gallery. In the music field, the area supports a Tri-City Symphony, the Quad-City Music Guild, and a civic music organization. There are three State parks in and near the area and several fairgrounds, such as the Mississippi Valley Fair Grounds and the Rock Island County Fair Grounds. The urban area contains more than 190 churches, with many additional rural churches on the fringe of the urban area.

7. Daily newspapers in the area are as follows: Moline Dispatch, circulation 28,085; Rock Island Argus, circulation 26,041; Davenport Democrat, circulation 21,205; and Davenport Times, circulation 28,697. There are two weekly newspapers, the Bettendorf Press, circulation 1,575, and the East Moline Herald, circulation 7,000. Davenport has three AM stations and one FM station; namely, KFMA, 500 w power; KSTT, 1 kw power; WOC, 5 kw power; and WOC-FM, 33 kw power. Moline has one AM station—WQUA, 250 w power, while Rock Island has one AM and one FM station—WHBF, 5 kw power, and WHBF-FM, 3.7 kw power. There are six television channels allocated to Davenport-Rock Island-Moline, namely, channels 4, 6, 8, *30 (educational reservation), 42, and 68. Channel 4 is in use by WHBF-TV, Rock Island, while channel 6 is in use by WOC-TV, Davenport. There is an application pending for UHF channel 68 in Davenport, file No. BPCT-2319. All of the applicants in the instant proceeding seek the use of channel 8 to serve the Quint-City area with main studios in Moline, Ill.

Community Telecasting Corp.

8. Community Telecasting Corp. is an Illinois corporation authorized to do business in Iowa as well as Illinois. Of 1,000 shares of authorized common voting stock, 909.09 shares have been subscribed for by 16 stock subscribers. The table below lists the stock subscribers, officers, and directors of the corporation; their city of residence; and the number of shares and percentage of voting stock subscribed for by each:

Name and residence address	Office held	Number of shares subscribed	Percent of voting stock
Mel Foster, Davenport, Iowa.....	President, director.....	90.91	10
Mark L. Wodlinger, Davenport, Iowa.....	Executive vice president, director, and general manager.....	1 90.91	1 10
G. Rodney Ainsworth, Moline, Ill.....	Vice president, director.....	90.91	10
Harold W. Hoersch, Bettendorf, Iowa.....	do.....	90.91	10
Clifford I. Josephson III, Rock Island, Ill.....	Secretary, director.....	90.91	10
Benjamin Aster Hartz, Rock Island, Ill.....	Treasurer, director.....	90.91	10
Clifford I. Josephson, Jr., Moline, Ill.....	Director.....	90.91	10
Elmer Andrew Underwood, Bettendorf, Iowa.....	do.....	90.91	10
George T. French, Moline, Ill.....	do.....	91.91	10
Clemens A. Werner, Davenport, Iowa.....	.....	18.18	2
Samuel G. Rose, Davenport, Iowa.....	.....	18.18	2
Charles H. Whitmore, Rock Island, Ill.....	.....	18.18	2
Edward W. Priester, Davenport, Iowa.....	.....	9.09	1
Col. Carl A. Waldmann, Rock Island, Ill.....	.....	9.09	1
William R. Harvey, Bettendorf, Iowa.....	.....	9.09	1
Clarence J. Bendle, Moline, Ill.....	.....	9.09	1
Total.....		900.09	100

¹ In addition to the 90.91 shares (10 percent) subscribed by Mark L. Wodlinger, Mr. Wodlinger has an option for 5 years from the day the proposed station goes on the air to purchase an additional 90.91 shares. In the event he exercises his option, he would then hold 18.2 percent of the issued stock. The percentages of ownership of the other stock subscribers would correspondingly be reduced as follows: 10 percent subscribers would be reduced to 9.1 percent; 2 percent subscribers: to 1.8 percent; and 1 percent subscribers to 0.9 percent.

Principals of community

9. *Mel Foster*: President and a director of Community was born in Columbus Junction, Iowa, in 1899. He resided in Columbus Junction until 1911 when he moved to Davenport. He has resided in Davenport continuously since 1911. He attended elementary and high school in Davenport and graduated from Brown's Business College, Davenport, in 1916.

10. Since 1921, Mr. Foster has been primarily engaged in the business of real estate and insurance, his principal business being the Mel Foster Co., Inc., of Iowa and Mel Foster Co., Inc., of Illinois, of which he is president, director, and principal stockholder. Mr. Foster is also an officer, director, and stockholder of several other real estate, land development, and construction companies; a director of the Iowa-Illinois Gas & Electric Co., Davenport, a public utility system; and is associated in business with several of the other stockholders of Community, namely, Harold W. Hoersch, William R. Harvey, G. Rodney Ainsworth, Clifford I. Josephson, Jr., Clifford I. Josephson III, Clarence J. Bendle, Charles H. Whitmore, and Edward W. Priester.²

11. Mr. Foster's civic, community, governmental, church, and business association activities have been as follows: In October 1958, he was appointed by the mayor of Davenport to serve on the City's Committee for Urban Renewal; in July 1955, he was appointed by Wendell Barnes, Small Business Administrator, to serve as a member of the

² Mr. Foster's past television interests will be described, *infra*, in conjunction with the findings with respect to Mr. Harold W. Hoersch. In addition to the interests there described, Mr. Foster held a minority interest in radio station KSTT, Davenport, for about 2 years, ending in 1945. When he acquired his interest in that station, the transfer of shares to Mr. Foster and another individual was promptly reported to the Commission by the licensee, KSTT. Inasmuch as the shareholders from whom the stock was acquired had previously held 50 percent each, the transfer involved a negative transfer of control, prior consent for which had not been obtained from the Commission. However, because of KSTT's prompt disclosure of the transfer in its ownership reports and renewal application, consent was thereafter granted by the Commission.

National Board of Field Advisers of the SBA, a post which he still holds; in March of 1958, he was invited to attend the President's Conference on Industrial Safety in Washington; in 1956, he was selected as the community's most distinguished salesman in community building, a civic works award made by the Davenport Sales Executive Board; in 1954, he was given a citation by the National Institute of Real Estate Brokers for outstanding contribution to the literature of real estate brokerage; in 1958, he was awarded a silver plaque by the officers of the Iowa-Illinois Gas & Electric Co. in recognition of 10 years of counsel and advice as a director of the company, the first such award made; on June 14, 1958, he was asked to write an editorial for a local newspaper on the subject "This I Believe" which was reprinted in a number of publications and in the Congressional Record.

12. In the past Mr. Foster has served as: Member and secretary of the Davenport City Plan Commission for 10 years; president of the Davenport PTA; president of the Davenport Chamber of Commerce, 1944 and 1945; president of the Davenport Real Estate Board for 2 years; trustee of the National Real Estate Foundation; director of the Davenport Outing Club; director of the Davenport Club; director of the Community Chest (now working on special gifts committee); director of the Mississippi Valley Fair Association; director of the Iowa Real Estate Board; chairman of the Scott County Postwar Planning Committee, coordinating the work of various civic organizations, headed by the chamber of commerce, to prepare the community and the county for the postwar period of adjustment; general chairman of the Quad-City Better Homes Show for 4 years; member of the Mississippi River Regatta Commission; and member of the State health committee. In addition to the foregoing, over the years he has served in varying capacities on committees and fundraising groups for various organizations.

13. Mr. Foster's current civic community activities include the following: Member of the Episcopal Church; member of the Mississippi River Parkway Commission, having been appointed by the Governor of Iowa in 1954; member of board of trustees of the Davenport YMCA; trustee and treasurer of St. Katherine's School, Davenport; member of the National Citizens' Committee on Rivers and Harbors; member of the Quad-City Industrial Development Committee since 1954, a group of 14 persons representing each of the cities in an effort to foster combined growth as distinguished from individual city growth; trustee for a 9-year term, beginning in 1956, of the Davenport Industrial Development Corporation which raised \$250,000 for industrial development in Davenport (Mr. Foster worked for 3 years on the organization of this group and is also a member of its executive committee); member of the Committee of the Friends of St. Ambrose College Living Endowment Fund; member of the Chamber of Commerce of the United States, Davenport Chamber of Commerce, Davenport Real Estate Board, Iowa Board of Realtors, Quad-City Home Builders' Association, Navy League, Lindsay Park Boat Club, Davenport Club, Town Club, Davenport Country Club, Davenport Outing Club, Rock Island Arsenal Golf Club, YMCA, Bettendorf Chamber of Commerce of Bettendorf, Iowa,

Izaak Walton League, National Association of Real Estate Brokers, Society of Industrial Realtors, National Association of Real Estate Boards, Retail Merchants Association, Scott County Farm Bureau, Iowa Club, Quarterback Club, Elks Club, American Institute of Real Estate Appraisers, Sales Executive Bureau, Davenport Knife & Fork Club, United Commercial Travelers, Iowa Good Roads Association, Iowa Tax Payers' Association, Scott County Sportsmen's Association, and the National Flying Fishermen's Club.

14. In 1946 Mr. Foster handled the negotiations for the Aluminum Co. of America which resulted in obtaining for Davenport (one of several cities under consideration for the plant site) and the State of Iowa their largest industrial facility costing \$150 million. In this effort Mr. Foster traveled 27,000 miles in 3 weeks in making the necessary arrangements, which included, among other things, assembling 45 units of property for the plant site, making arrangements for a railroad siding and river frontage rights, obtaining rights-of-way for roads, and the handling of allocations of materials from the Government. In 1956, as secretary and manager of the Veterans' Housing Corp., Mr. Foster helped in obtaining for Davenport a 57-unit housing project for exclusive rental to veterans.

15. In the event of a grant to Community, Mr. Foster will devote at least 18 hours per week to the station's day-to-day affairs, excluding the usual corporate meetings. During the period of station construction and until the station has been on the air long enough to be operating smoothly, he will devote more time than mentioned above if necessary. Mr. Foster will devote this time to the affairs of the proposed station in his capacities as president and director, chairman of the station's editorial policy board, vice chairman of its community affairs committee, and chairman of the Subcommittee on Davenport Community Affairs. The composition and functions of these boards and committees will be hereinafter described.

16. Mr. Foster took an active part in Community's television plans and preparations, including, among other things, studio planning, site negotiations, equipment negotiations, organization and fiscal plans. Further, he attended and presided over 14 joint stockholder-director meetings held by the applicant between May 16, 1958, and the time of the exchange of the written direct case.

17. *Mark L. Wodlinger*: Executive vice president and general manager of Community. He was born on July 13, 1922, in Jacksonville, Fla. He has resided in the Quint-Cities since 1947 when he moved to Moline, Ill., where he resided until 1949. In 1949 he moved from Moline to Davenport, Iowa, where he has resided continuously since that date. For almost 10 of his 11 years' residence in Moline and Davenport, Mr. Wodlinger has worked for an existing television station in Davenport, WOC-TV, as will be more fully described below.

18. Mr. Wodlinger entered the communications industry as a salesman for radio station WQUA, Moline, in 1948. Shortly after the Commission granted the first television construction permit in the Quint-City area to WOC-TV, Davenport (1948), Mr. Wodlinger obtained a position as salesman for WOC-AM and WOC-FM, Davenport, looking toward the opportunity of serving with the television

operation. When the television station went on the air in 1949, he became a salesman for that station as well and, in 1950, became sales manager for WOC-AM-FM and TV, a position which he held until October 1, 1958, when he resigned to assume full-time duties with Community Telecasting Corp.

19. In the capacity above described, Mr. Wodlinger assisted in putting WOC-TV on the air. He sold the first accounts on WOC-TV and participated in clinics established at the station to educate the businessman and the public to the new medium of television. When the station went on the air he endeavored to obtain as much working knowledge of station operations as possible, working with the station's program director, Mr. Don Bohl, in the actual operations of the studio. He also appeared on the air in programs involving interviews with local businessmen.

20. Mr. Wodlinger also worked with Mr. Bohl in the formulation and preparation of programs bringing ideas to him for program formats. As a result of his saleswork he also made and participated in the making of many programs and local commercials, remote and otherwise. For several years Mr. Wodlinger participated in the actual production of the Salvation Army "Tree of Lights" charity telethon show, working in various production capacities. He also assisted Mr. Bohl in working out the arrangements for a series of programs in cooperation with the State University of Iowa, similar to those proposed in Community's educational program entitled "The Educators Speak," hereinafter described, wherein the university brought to the studio an entire program, created, produced, and directed by the students of the radio and television section of the university's speech department, who served as actors, directors, etc., in "on the air" experience for their closed-circuit operations in the university's own fully equipped television studio.

21. Mr. Wodlinger negotiated an agreement with the "Education Train" sponsored by the Ford Foundation and various manufacturers to bring the train to Davenport for several days in December of 1958—a project promoted and publicized by WOC. He also made all of the arrangements and auditioned and obtained talent for several barn dance programs on WOC-TV, similar in format to the "Illowa Varieties" program proposed by Community Telecasting Corp. Similarly, he worked out the arrangements and auditioned talent for a series of three-per-week ¼-hour live music shows. He also arranged for a series of appearances on WOC-TV of the opera singer, Marguerita Roberti. He sold and arranged the details for a 26-week ½-hour show for the Illinois Agricultural Association and made various arrangements for WOC-TV's "Rural Roundup" show such as arranging to obtain the daily hog market quotations.

22. Mr. Wodlinger conceived the idea for and instituted live news shows in the three 5-minute breaks in the Dave Garroway "Today" show at WOC-TV. He also instituted a Saturday night newscast at WOC-TV, the only Saturday night news show on television in the Quint-City area. Further, he made arrangements with the Tommy Bartlett Water Ski Show to bring it to Davenport for local appearances, and arranged for a remote telecast of the show.

23. Mr. Wodlinger initiated and handled the negotiations with the Sports Television Network to televise the Big 10 basketball games over WOC-TV; made the arrangements for the televising of the 1958 Iowa State High School Boys' Championship basketball games; worked with the State University of Iowa and other universities and the NCAA in arranging for the telecasts of regional Big 10 football games over WOC-TV which would otherwise not have been carried in the area because of NCAA geographical restrictions; and arranged for a series of golf shows using the Rock Island Arsenal golf pro and other pros.

24. In his capacities with civic organizations, Mr. Wodlinger has handled the publicity and noncommercial spot announcements on both radio and television, including the WOC stations and others, for such organizations as the Scott County Heart Association, of which he has been a director for 3 years; the Red Cross Disaster Committee, for which he has served as the chairman of the information division since 1955; the Sales Executive Club of Davenport, of which he has been a director for 3 years; the Davenport Chamber of Commerce, of which he has been a director since 1956; and the Optimist Club of Davenport, of which he was president in 1950.

25. Over the years Mr. Wodlinger handled WOC-TV's television network negotiations and station relations with the ABC Network, with which Community proposes to affiliate if granted. He also had charge of all clearances of NBC television shows on WOC-TV and handled the major portion of all television film buying for the station since its inception, dealing with the distributors of both feature and syndicated films. As sales manager at WOC-TV he was also responsible for the hiring and supervision of the salesmen and sales promotion manager; supervised the traffic department; and was responsible for recognizing policy problems in sales and other fields of station operations, analyzing them and presenting them to the executive vice president for decision.

26. Since 1950 Mr. Wodlinger has attended most regional and national conventions of the NAB and NARTB, as well as the conventions of the Radio Advertising Bureau and Television Bureau of Advertising. He presented a talk on television sales at the regional NAB meeting in the fall of 1956 in Minneapolis.

27. In addition to his past television experience in the market to be served, Mr. Wodlinger has engaged in a great variety of civic and community endeavors too numerous to detail here, and all highly estimable. He is an Episcopalian and a member of the Masonic Lodge.

28. Mr. Wodlinger will devote full time to the proposed station as its executive vice president, director, and general manager, and in service on its editorial policy board and building committee.*

29. *George Rodney Ainsworth*: Vice president and director of Community, was born in Moline on September 7, 1890, and has resided in Moline and East Moline his entire life. He attended the

* Mr. Wodlinger rendered programming assistance in a consulting capacity to Community in the preparation of its original application filed in May of 1957. However, he did not become associated with Community as a stockholder, officer, and director until May of 1958, shortly before the final amendments to the application were filed.

public schools and 3 years of high school in Moline and thereafter graduated in 1909 from Oberlin Academy, Oberlin, Ohio (preparatory school). He attended Oberlin College from 1909 to 1910 and thereafter the University of Minnesota from which he graduated in 1914 with a B.A. degree.

30. In 1914 Mr. Ainsworth joined Dimock, Gould & Co., dealers in lumber and building materials in Moline since 1852. Dimock, Gould & Co. has been an Ainsworth family business for 60 years, serving Moline, East Moline, Rock Island, and Bettendorf. He has been a director of the company since 1915, serving in the Army from 1917 to 1919. Mr. Ainsworth thereafter returned to Dimock, Gould & Co. and became president of the company in 1930, a post which he still holds although now semiretired. He has also been a stockholder, officer, and director in other lumber companies. Mr. Ainsworth is also president and director of Wholesale Distributing Co. of Moline, Ill., a division of Dimock, Gould & Co., warehousing and distributing building materials, and is a director and stockholder of the Fifth Avenue Realty Building Corp., Moline office building at 1630 Fifth Avenue.

31. Mr. Ainsworth has been a member of the Rotary Club of Moline since 1914, the year in which it was founded. He has served as secretary of Rotary and as a director for many years. In 1948, he was chairman of the historical committee in the Moline Centennial Celebration, which collected and furnished much of the historical data and material for the pageant and parade; he was also instrumental in the design and execution of the bronze plaque now mounted on a monument on the grounds of the Moline City Hall in commemoration of the centennial. Mr. Ainsworth has been very active in church and community affairs, organizations, and the like. He is a Mason and a member of the Congregational Church.

32. In the event of a grant of construction permit to Community, Mr. Ainsworth expects to spend an average of 8 hours per week on the station's affairs during the periods when he is in Moline. As noted earlier, Mr. Ainsworth is semiretired. It is his practice to spend from 4 to 6 months each year in vacationing and travel. During the remaining 6 to 8 months, he is in Moline and will be available to the station. Since he is semiretired, his time is flexible and he can, if necessary, spend any amount of time on station affairs, as may be required. His work for the station will encompass the following duties: (1) discharging the normal functions of a vice president and director of the corporation; (2) serving on the subcommittee for Moline and East Moline community affairs; (3) serving on the subcommittee for service area affairs; and on the building committee.

33. Mr. Ainsworth has lived on and managed the affairs of a farm in the Moline area for many years and is acquainted with county agents and other farm officials and organizations, particularly in Rock Island County. In his capacity as coordinator for farm affairs for Community, he will maintain a continuing contact with agricultural organizations and interests, and will work with Community's full-time farm director in an effort to assure that the needs of the agri-

cultural interests are properly served by the station's agricultural programming.

34. *Harold W. Hoersch*: Vice president and director of Community, resides in Bettendorf. He was born December 26, 1896, in Davenport, living there until 1945 when he moved to adjoining Bettendorf. He has lived in Bettendorf continuously since that date. He attended elementary and high school in Davenport and thereafter obtained his B.S. degree in economics from the Wharton School of Finance and Commerce of the University of Pennsylvania in 1921. He thereafter attended and obtained his J.D. degree from the State University of Iowa in 1924. He also attended the University of Michigan Law School in graduate work on trial practice. He served as an ensign in the U.S. Naval Reserve during World War I. He has practiced law in Davenport since 1924.

35. In addition to his law practice and certain individual and family-owned real estate properties,* Mr. Hoersch is interested as an officer, director, stockholder, and partner in various Davenport real estate and land development companies and in a Davenport construction company. He is associated in business with Mr. Mel Foster, president of Community, in several of these companies and with Mr. William R. Harvey, another Community stockholder, in the Harvey Construction Co. of Davenport. Mr. Clemens A. Werner, another Community stockholder, is Mr. Hoersch's law partner.

36. Mr. Hoersch's past broadcast interests have consisted of the following: In 1952, Mr. Mel Foster and Mr. Hoersch made application as 60-40-percent partners for a construction permit for channel 7 in Miami, Fla. Because of site problems and inability to find an acceptable proposed general manager for the station, the application was dismissed without prejudice by Commission order of February 16, 1954, in docket No. 10855. In 1953 Mr. Foster and Mr. Hoersch, as 50-percent partners, received a grant of construction permit for UHF channel 36 in Davenport (file No. BPCT-1473). Because of UHF receiver conversion problems, site zoning problems, inability to obtain network programs, and probable unprofitability of the UHF operation, the construction permit was relinquished on November 7, 1953.

37. Mr. Hoersch's civic, church, and community activities, past and present, have been as follows: He was secretary and treasurer of the Scott County (Iowa) Bar Association from 1930 to 1935. He is now president of the Scott County Bar Association. He was secretary of the Davenport Lions Club from 1925 to 1928. From 1926 to 1957 Mr. Hoersch was deacon and elder on the church council of St. Paul's Lutheran Church, Davenport, and chairman of the finance committee of St. Paul's Lutheran Church from 1940 to 1957. He is a member of the BPO Elks of Davenport, the Outing Club of Davenport, and the Rock Island Arsenal Golf Club, Rock Island, Ill.

* In 1949 the regional office of the Housing Expediter brought a civil action against Mr. Hoersch and his wife in the U.S. District Court for the Southern District of Iowa, Davenport Division, alleging collection of rent in violation of the Rent Control Act. Mr. Hoersch and his wife had bought the property involved for \$15,000, spent \$25,000 on it, and took the position that, under the wording of the act, it was a new rental unit upon which no rent was fixed. A consent judgment was filed and paid immediately in the amount of \$225.

38. In the event of a grant to Community, Mr. Hoersch will devote approximately 15 hours per week to the affairs of the station until it is on the air and operating smoothly. After that time he expects to devote about 10 hours per week to the station. His work will consist of the usual and necessary corporate executive duties of a vice president and director; service as chief local legal counsel to the corporation in its corporate affairs and necessary legal work in relation to station construction, operation, and fiscal matters; service as director of public relations for the station in which capacity he will supervise and guide the station's official contacts with community, public, governmental bodies.

39. Mr. Hoersch took an active part in Community's plans and preparations to engage in television, performing the legal work incident to the formation of the corporation, working with Mr. Foster on the fiscal arrangements for the corporation and its necessary capitalization, and in negotiating for and performing the legal services in connection with obtaining options on the transmitter and studio sites. He also worked with Mr. Foster in negotiating an equipment proposal for the station—originally with RCA and thereafter with General Electric. The original application, filed May 31, 1957, was also prepared under his overall direction. He thereafter participated in the preparation of the various amendments to the application which were filed, including the working out of the new capitalization of the corporation, stock subscriptions and financing arrangements, employment and stock option agreements for Mr. Wodlinger, and other matters. He also worked with Washington counsel for Community and the other Community stockholders in supervising and working out the details of the various plans and preparations for the comparative hearing, and in performing legal, fiscal, and other services incident to the preparation of the case for hearing.

40. *Clifford I. Josephson III*: Secretary and director of Community, resides in Rock Island. He was born March 21, 1920, in Moline, lived in Moline until 1946 when he moved to Rock Island where he has resided to date. He attended the Moline public schools and is a graduate of the Lake Forest Academy, Lake Forest, Ill. He attended the University of Wisconsin from 1938 to 1942. He served in World War II as a second lieutenant in the Air Force. After the war, Mr. Josephson joined C. I. Josephson Jewelers, which has been in business in Moline under his family's management since 1881. He has been a 20-percent partner in the firm since 1946. He is also vice president and a director of the Fifth Avenue Realty Building Corp.

41. Mr. Josephson is a member of the First Congregational Church, has been a member of the Rotary Club of Moline for about 9 years, and a member of the Elks Club of Moline for 10 years. He is also a member of Chi Psi college fraternity and the Izaak Walton League.

42. In the event of a grant of construction permit to Community Telecasting Corp., Mr. Josephson will devote approximately 12 to 15 hours weekly to the station's affairs. The nature of his work at C. I. Josephson Jewelers is such that he could spend substantially more time than this on an irregular basis if needed. Mr. Josephson will serve the station as secretary and a director of the corporation; member

of Community's subcommittee on Moline and East Moline Community affairs; member of Community's subcommittee on service area affairs; and member of Community's building committee during the period of the station's construction.

43. *Benjamin Aster Hartz*: Treasurer and a director of Community, resides in Rock Island. He was born in Rock Island on June 20, 1892, and has resided in Rock Island continuously since birth. Mr. Hartz was educated in the Rock Island elementary and high schools, attended Augustana College, Rock Island, and Yale University, graduating therefrom with a B.S. degree in 1915.

44. Mr. Hartz is now retired, having spent 43 years in the wholesale drug business in Rock Island. For 14 years he worked in operations, buying and selling for Hartz & Bahnsen, which in 1929 was sold to McKesson & Robbins, Inc., which operates a division in Rock Island. Mr. Hartz served 29 years with McKesson, retiring in 1958 as vice president and division manager of McKesson's Rock Island Division, a post which he had held since 1931. He is also president, director, and stockholder in Hartz & Bahnsen which was retained as a real estate holding corporation after its sale to McKesson. He has been a stockholder in the First National Bank of Rock Island for over 50 years and has served as a vice president of the bank since 1954 and a director since 1938. He is also a member of its executive committee and loan committee.

45. Mr. Hartz has been a member of the Rock Island Chamber of Commerce for about 15 years and a member of the Rock Island Rotary Club for 23 years. From 1940 to 1942 he served two terms as president of the Rock Island Community Chest, also serving on its executive committee. He served as a director of the Chest from 1937 to 1942 and has been a member of its fund drives since the Chest was organized in 1925. He was also a member of the budget committee for the Chest in 1935.

46. Mr. Hartz served as: Chairman of the Navy Relief Fund Drive, Rock Island, in 1942; chairman in 1950 of the St. Anthony's Hospital Fund Drive, Rock Island, which was the largest individual fund-raising effort ever held in Rock Island, raising approximately \$400,000; treasurer in 1952 of the Rock Island YWCA Drive to build a new building which exceeded its goal. He is a member of various trade organizations. He attends Trinity Episcopal Church, Rock Island.

47. In the event of a grant of construction permit to Community, Mr. Hartz will be able, in view of his recent retirement, and prepared to devote as much as 30 to 40 hours per week to the station's affairs. His work for Community will consist of service as (1) Treasurer and director of the corporation; (2) member of the subcommittee on Rock Island Community affairs; (3) member of the subcommittee on service area affairs; (4) member of the religious affairs subcommittee; and (5) director of education for the station.

48. *C. I. Josephson, Jr.*: Director of Community, resides in Moline. He was born in Moline on April 9, 1895, and has resided there continuously. He was educated in the public schools of Moline. He attended and graduated from the University of Wisconsin in 1916 with an

A.B. degree. He is also a graduate of the Northern Illinois College of Ophthalmology, having received a master's degree in ophthalmology in 1917. During World War I, Mr. Josephson was a captain in the Air Service, Armament Division.

49. Mr. Josephson began work for C. I. Josephson Jewelers, Moline, in 1910, and has been a partner in the business since 1919. He is now a 60-percent partner in the business with his sister and his son, C. I. Josephson III, previously mentioned, both of whom are 20-percent partners. His other business interests are as follows: Director of the First National Bank of Moline since 1939 and a vice president thereof since 1958; president and director of the Fifth Avenue Realty Building Corp.; stockholder in the Fifth Avenue Realty Building Corp., as is the estate of C. I. Josephson, of which he is the executor; president, director, and a stockholder in Moline Finance Corp., Moline, Ill., a finance company, from 1927 to February 13, 1958.

50. Mr. Josephson's civic, community, and business association activities, past and present, are and have been extensive. He is a member of the First Congregational Church of Moline and is a Mason.

51. In the event of a grant to Community, Mr. Josephson expects to devote an average of 12 hours per week to the station's affairs on a flexible basis. His work will fall into two categories: (1) discharge of the usual functions of a director, and (2) in the discharge of his duties as director of Community affairs for the station.

52. *Elmer A. Underwood*: Director of Community, has resided in Bettendorf, Iowa, since April 21, 1950. From March 1945 to April 1950, he lived in Davenport. Mr. Underwood was born in 1907 in Tiskilwa, Ill. He attended various rural elementary schools and graduated from high school at Blooming Prairie, Minn., in 1926. He joined Sears, Roebuck & Co. in 1931 and has spent 27 years with that company. On February 1, 1945, he became manager of the Davenport, Iowa, Sears, Roebuck & Co. store. He is now group manager of two Sears' stores—those in Davenport and Moline—as well as a distributing warehouse. He is also a small stockholder in Sears, Roebuck & Co.

53. Mr. Underwood's community and civic activities, past and present, have been, and are, very wide, encompassing almost all ranges of endeavor, civic, social, and religious.

54. In the event of a grant of construction permit to Community, Mr. Underwood will be able and intends to devote approximately 15 hours weekly to the affairs of the station in four areas of effort: (a) attendance at directors' meetings and the performance of usual director's duties; (b) the rendering of advice and assistance to Community's management as Community's director of publicity and sales promotion in matters involving advertising, promotion, and sales; (c) in serving as a member of Community's editorial policy board; and (d) in his capacity as chairman of Community's subcommittee on Bettendorf community affairs.

55. *George T. French*: Director of Community, resides in Moline. Mr. French was born on October 6, 1911, in Davenport, Iowa, where he resided until 1942. In that year, he moved to Moline, where he has resided since. He attended the public schools of Davenport and graduated in 1929 from Phillips Academy, Andover, Mass. He there-

after attended Yale University from which he graduated in 1933. In 1933, he served a brief period on active military duty as a second lieutenant, Field Artillery Reserve.

56. In 1934, Mr. French joined Deere & Co., and has been associated with this company ever since. In 1951, he was elected a director of Deere & Co., and in 1956 was elected to the office of vice president, the position which he now holds. His work in this position entails executive direction of the engineering and manufacturing activities of 12 Deere & Co. plants.³ Since 1946, Mr. French has also been treasurer, stockholder, and a director of Central Engineering Co., Davenport, Iowa, a highway construction company. Mr. French has had wide experience and participation in governmental, charitable, and religious activities in the area. He is an Episcopalian.

57. In the event of a grant to Community, Mr. French will be able and intends to devote an average of 10 hours per week (or more, in the beginning) to the affairs of the station on a flexible schedule. He would expect to assist in station supervision and operation by (a) attending at directors' meetings and performing the usual director's duties, (b) assisting the officers and management of Community by rendering executive advice, (c) serving as a member of Community's editorial policy board, and (d) serving as chairman of Community's subcommittee on Moline and East Moline community affairs.

58. *Clemens A. Werner*: Stockholder in Community, resides in Davenport. Mr. Werner was born April 3, 1914, in Walcott, Scott County, Iowa, where he resided until 1941. He graduated from Davenport High School in 1931 after which he attended and obtained a B.S. degree at Northwestern University in 1935. He graduated from the Law School of Northwestern University with a J.D. degree in 1938, practiced law in Davenport from 1939 to 1941, at which time he entered the armed services. Entering the Army as a private in June 1941, Mr. Werner worked his way through the ranks, was commissioned and received his captaincy at Bastogne, Belgium, in December 1945, during the Battle of the Bulge. He was awarded the Bronze Star for "Outstanding Performance of Duty" in the crossing of the Rhine River at Worms, Germany, and the French Croix de Guerre for work done during the Battle of the Bulge. He returned to Davenport after discharge from the service and has resided in Davenport continually since 1945.

59. Mr. Werner served as assistant county attorney for Scott County, Iowa, from January 1, 1946, to July 1, 1948. He thereafter entered the private practice of law, becoming, in 1956, a one-third

³ As a result of an informal exchange of information among counsel prior to the hearing, it was stipulated by the parties that in May of 1949 a complaint was filed by the Federal Trade Commission against the Malleable Chain Manufacturers Institute and eight other respondents engaged in chain manufacture, including a division of Deere & Co., alleging violations of the Federal Trade Commission Act. In 1952 a consent order was entered requiring certain respondents, including Deere, to cease and desist certain practices, the order providing that, in consenting, the respondents neither admitted nor denied that they engaged in the practices stated to be in violation of the law. Mr. French, Community's stockholder and director, was not an officer or director of the respondent Deere & Co. at the time the complaint was filed and at the time the violations were alleged to have occurred. At the time of the filing of the complaint he was the manager of the division of Deere involved in the proceeding. There is, however, no evidence that Mr. French individually participated in any of the matters complained of. Upon the facts of record, no conclusion adverse to Mr. French or to the applicant, Community, can be reached.

partner in the firm of Hoersch, Werner & Harbeck. Mr. Werner is also a 46-percent stockholder in Community and has been, since 1949, vice president of the Walcott Trust & Savings Bank, Walcott, Iowa. He has been the half-owner of a 226-acre farm since January 1949, and has managed a 200-acre farm since 1953.

60. Mr. Werner was appointed as director of civil defense for Scott County, Iowa, in 1950 and served in that capacity until 1955. In 1940 Mr. Werner was awarded a special gift for establishing a new record in the YMCA membership drive in Davenport; in 1940, he provided a traveling trophy for the school, sending the winner to the Scott County Spelling Contest and donated cups for the winner and runner-up. Upon return from service in World War II and as a result of Legion membership, he secured the support of the Scott County American Legion organization in donating cups for the winner and runner-up in the annual Scott County Spelling Contest and also secured money from the Scott County bankers organization for each participant in the contest. He has been a member of St. John's Methodist Church since 1946 and since 1947 a member of the official board of trustees of the church; he taught 11th and 12th grade Sunday school classes in 1946 and 1947 and was chairman of the promotional campaign for erection of a \$250,000 additional unit and chapel for the church in 1947 and 1949. He is presently serving on the radio committee, Wills committee, and official board of the church. Mr. Werner has been, and is, extremely active in a wide variety of religious, cultural, veterans', civic, and business affairs and organizations. There is no need to encumber this decision with minutiae concerning his activities.

61. In the event of a grant of construction permit to Community Telecasting Corp., Mr. Werner expects to have available at least 12 hours per week which could be devoted to the affairs of the station on a flexible rather than regularly scheduled basis. He anticipates that he would be required to devote an average of 8 to 10 hours per week to his duties for the station. These duties will consist of service to the station as its assistant legal counsel, assisting his law partner, Mr. Harold Hoersch, vice president and legal counsel for the station, in such legal matters as may arise from time to time and serving in his stead in the event of his unavailability; as a member of the station's editorial policy board; as a member of the subcommittee on Davenport community affairs; as chairman of the subcommittee on service area affairs; and in assisting Mr. Rodney Ainsworth, vice president and coordinator of farm affairs for Community, in maintaining contact and liaison with the agricultural interests in the Iowa segment of the proposed service area. During the periods of the year when Mr. Ainsworth is away from Moline, Mr. Werner will assume his duties as farm coordinator for the station.

62. *Samuel G. Rose*: Stockholder of Community, resides in Davenport, Iowa, where he has lived since 1909. Mr. Rose was born on July 26, 1887, near Rapid City, S. Dak., in what was then the Dakota Territory. He resided in Sioux City, Iowa, from shortly after birth until 1909. He was educated in the elementary and secondary schools of Sioux City, after which he attended the University of Nebraska for

2 years. In 1910, Mr. Rose became associated with the Victor Animatograph Corp. which pioneered the development and manufacture of motion picture cameras and projectors. He has been associated with Victor since 1910, serving as salesman, sales manager, secretary, vice president and president, and director and chairman of the board. He has also been a stockholder of Victor for many years. He retired from the company in 1958. Mr. Rose was directly involved in extensive developmental work by Victor. He also worked with the National Education Association in establishing within it a division of audio-visual instruction. He helped to organize the National Audio-Visual Association composed of distributors of equipment and film library operators, and has been an associate member of that association since 1928. He received a "Pioneer Award" from that organization on July 25, 1958. Mr. Rose has been a member of the Society of Motion Picture & Television Engineers since 1918 and was awarded a 30-year Service Certificate on May 4, 1954. He has been an associate member of the Edison Pioneers since 1956. He was a member of the National Association of Photographic Manufacturers, having served on its organizing committee and as a member of its board from 1945 to 1949, when it worked with the Government on materials allocations. He served on the advisory board of the Film Council of America from 1945-46 which was a movement to promote the use of the picture screen in schools.

63. Mr. Rose's civic and community activities are extensive, including, among others, work in the field of education. He has been a member of the Davenport Board of Education.

64. In the event of a grant of construction permit to Community, Mr. Rose proposes to devote at least 10 hours weekly to the daily affairs of the station and substantially more time if necessary. Having retired from his former business activity, he is in a position to devote at least half of his time to the station if it should be required. The work which he intends to perform for the station will lie in the following areas: He will render advice and working assistance to the station in matters of film selection and procurement, particularly educational, religious, industrial, and documentary films—a field to which he has devoted most of his life. He will maintain contact with producers and distributors of educational, industrial, and religious films, with audio-visual departments, associations, and organizations on a local, State, and national level, and with educators in the Quint-City area, with all of whom he is acquainted through past experience, in an effort to assure an adequate supply of educational, documentary, industrial, and religious films of the type suited for the programs proposed by Community. In the matter of educational films, he will work with Mr. B. A. Hartz, Community's director of education, and with Community's educational director-producer and film director. He will also serve as a member of Community's subcommittee on Davenport community affairs and as a member of Community's subcommittee on service area affairs.

65. *Charles H. Whitmore*: Stockholder of Community, resides in Rock Island. Mr. Whitmore was born June 29, 1914, in Atlanta, Iowa, where he resided until 1936. After residing in Iowa City, Iowa,

Chicago, Ill., and Evanston, Ill., Mr. Whitmore moved to Rock Island, Ill., in April of 1946 where he has since resided. Mr. Whitmore received his B.A. degree from Grinnell College in 1935. He thereafter received his J.D. degree from the State University of Iowa Law School in 1940. From December 1943 to March 1946 he served in the U.S. Navy as a supply officer.

66. From 1937 to 1943 Mr. Whitmore served as assistant counsel and executive operating assistant for the United Light & Power Co. In 1946 he became assistant to the president of the Iowa-Illinois Gas & Electric Co., Davenport, Iowa. From 1948 to 1954 he served as general counsel for the latter firm, and from 1950 to 1954 was a vice president of the company. He has been a director of Iowa-Illinois Gas & Electric since 1950, president of the company since 1954, and chairman of the board since 1956. He owns less than 1 percent of the stock of Iowa-Illinois Gas & Electric. Mr. Whitmore is also a trustee and member of the executive committee of the Power Reactor Development Co., Detroit, Mich., which is developing and building a power reactor for utility systems.

67. Mr. Whitmore's community, civic, and industry-association activities are in the general pattern of the other officers and/or directors or stockholders of Community heretofore mentioned. It may be added that he is a member of the board of trustees of Grinnell College.

68. In the event of a grant of construction permit to Community Telecasting Corp., Mr. Whitmore will have available and intends to devote approximately 5 hours per week to the affairs of the station outside his normal working hours. His work will consist of lending market analysis advice to the management of the station, and in serving as a member of the station's subcommittee on Rock Island community affairs.

69. *Edward W. Priester*: Stockholder of Community, resides in Davenport. Until October 1958, he resided in Bettendorf. He has lived in Bettendorf and Davenport since his birth on April 3, 1923, in Davenport. Mr. Priester attended elementary and high school in Davenport, thereafter spending 2 years in college at the University of Notre Dame and 2 years at St. Ambrose College, Davenport, from which he graduated in 1947 with a B.A. degree. Upon graduation, Mr. Priester worked for 2 years as a salesman for the National Building Supply Co. of Davenport and thereafter as an agent, "troubleshooter," and station master for Ozark Airlines in Moline, Ill. In 1952 he entered the real estate and general insurance field. From 1952 to 1957 he was a salesman with the firm of Ruhl & Ruhl, Davenport. From January 1957 to date, he has served in a sales capacity with the real estate and insurance firm of Mel Foster Co., Inc., Davenport. Mr. Priester has been active in community affairs, principally those concerned with the Catholic Church, of which he is a member.

70. In the event of a grant to Community, Mr. Priester expects to devote from 18 to 20 hours per week to the affairs of the station in the following capacities: (1) Member of the subcommittee on Davenport community affairs; (2) chairman of the subcommittee on religious affairs; (3) member of the service area affairs subcommittee; and (4) part-time salesman for Community Telecasting Corp. Mr.

Priester testified that his work for Mel Foster Co., Inc., is such that he will be able to devote approximately 4 hours per day to direct sales efforts on behalf of the television station, dovetailing this work with other outside real estate and insurance sales efforts.

71. *Carl A. Waldmann*: Stockholder of Community, resides in Rock Island. He is a retired colonel in the U.S. Army, who was born in Rock Island County on September 12, 1887. While his early years (1895-1915) were spent in California and Oregon and his career as an Army officer took him to various other parts of the country, Colonel Waldmann's direct testimony indicates that he has always considered Rock Island as his "family home."

72. During his military career, Colonel Waldmann has been stationed at numerous posts in a number of different capacities. Twice in the 1920's he was stationed at Rock Island Arsenal—once for a period of 3 years and once for 2½ years. Among other assignments, he was on the staff of the commanding general, 5th Corps Area, at Fort Benjamin Harrison, Ind., and at Columbus Barracks, Ohio; served as assistant professor of military science and tactics at the Massachusetts Institute of Technology, Cambridge, Mass.; was in charge of ordnance maintenance in the Office of the Chief of Ordnance, Washington, D.C., for 4 years; and served on the staff of the commanding general, 9th Corps Area, Presidio of San Francisco, Calif. While in the service and in furtherance of his Army education, he attended for 2 years and received his master's degree in business administration from the Harvard Business School of Harvard University. He also attended the Army Industrial College in the 1937-38 school year.

73. From 1938 to 1947, the year in which he retired, Colonel Waldmann was stationed at the Rock Island Arsenal. During the last 3 years of his service, 1944-47, he was commanding officer of the arsenal. Colonel Waldmann was awarded the Legion of Merit Medal in 1946. After retirement from the service, he became manager of the export boxing and materials handling department of Deere & Co., Moline, Ill., in which capacity he served from 1947 to 1954. Since 1954 he has been in retirement and has no other business or financial interests except his present interest in Community.

74. Colonel Waldmann's civic and community activities have been extensive, leaning toward emphasis upon the civic and historical aspects of the general community. He is an Episcopalian.

75. In the event of a grant of construction permit to Community, Colonel Waldmann is prepared to devote from 20 to 40 hours per week to station activities as may be required. His work for Community will consist of serving in the following capacities: (1) Coordinator of military affairs; (2) chairman of the subcommittee on Rock Island community affairs; (3) member of subcommittee on religious affairs; (4) member of subcommittee on service area affairs; and (5) member of the editorial policy board.

76. *William R. Harvey*: Stockholder of Community, resides in Bettendorf. Mr. Harvey was born in Stuart, Iowa, on September 29, 1920, and lived in Stuart and Des Moines until graduation from high school. He attended William Penn College in Oskaloosa, Iowa, and

Compton Junior College, Compton, Calif. After working for various architectural firms and serving in the Army in World War II, Mr. Harvey returned to Des Moines, Iowa, in 1946 where he worked as architectural examiner for the Federal Housing Administration until April of 1951. He moved to Bettendorf at that time and has resided there since that date. Upon coming to Bettendorf, Mr. Harvey became 50-percent owner, president, director, and manager of the Harvey Construction Co., Bettendorf, general contractors, which is his only business interest other than his interest in Community Telecasting Corp.

77. Mr. Harvey's community, civic, and trade association activities are considerable, with emphasis upon building and church matters. He is a Methodist.

78. In the event of a grant of construction permit to Community, Mr. Harvey will be able to make an airplane available to, and pilot it for, Community in order to transport Community's personnel and equipment by air to cover emergency or special news events, such as floods, fires, or other disasters, or to cover other special events on short notice when distance and time make air travel desirable. One of two planes available to Mr. Harvey is especially designed for taking aerial photographs. Mr. Harvey's office is located only one-half mile from the airport and his hours are such that he can be available for this purpose at almost any time. Mr. Harvey has available at least 15 hours per week to devote to the station's affairs, if needed, on a flexible basis. He anticipates that he would be required to devote an average of at least 5 hours per week to the station. His work would consist of the air transportation service to the station from time to time as described above; service on the building committee of the corporation during the period of construction; and the discharge of his duties as a member of the station's subcommittee on Bettendorf community affairs.

79. *Clarence J. Bendle*: Stockholder of Community, resides in Moline. Mr. Bendle was born in Moline on March 13, 1900, and has resided there all of his life except for a 4-year period from 1926 to 1930 in Chicago. He attended the public elementary schools and high school of Moline, after which he attended and graduated from the University of Illinois in 1925, having majored in accountancy. Mr. Bendle's principal business is that of public accountant and tax consultant in which he has engaged since 1930 as an individual proprietorship. His other business interests are as follows: President, director, and 100-percent owner since 1951 of Moline Industries, Inc., a payroll service company; vice president and a director since 1944 of the First Federal Savings & Loan Association of Moline; treasurer and director since 1943 of Henry F. Petersen Investment Co., Moline; a director and less than 25-percent stockholder since 1943 of Fifth Avenue Building Realty Corp. of Moline; accountant for the building corporation; secretary-treasurer, director, and 49-percent stockholder since 1953 of Community Realty Corp., Moline, a real estate business; vice president and a director since July of 1938 of Peters Bakery, Inc., Moline; and vice president and a director since 1955 of Powelson Shoe Store, Inc., Moline.

80. Mr. Bendle's civic, community, and business association activities have likewise been extensive. He is a member of the Congregational Church.

81. In the event of a grant of construction permit to Community, Mr. Bendle is able and intends to devote a minimum of 18 hours per week to the station's affairs. If necessary, he can devote additional time. His work will take two forms: First, he will serve as comptroller for the corporation. The executive offices and main studios of the station will be located in the Fifth Avenue Realty Building, in which his accounting firm is also located. It will be his responsibility to supervise the auditing, bookkeeping, and accountancy operations of the corporation. From his experience in rendering similar service to other corporations, he anticipates that this work will require from 2 to 3 hours daily. In this connection, in addition to handling the bookkeeping and accounting for various types of businesses, Mr. Bendle set up the initial distribution of assets and evaluation for radio station WQUA, Moline, and has handled the accounting details for that station since about 1950. He has also handled the accounting of station WQUB, Galesburg, Ill., since its inception. It is anticipated that the major books and ledgers of Community will be kept and maintained by Mr. Bendle in his office, while the station auditor and bookkeeper will keep the daily, current records in the station's offices under Mr. Bendle's daily supervision. Mr. Bendle's other major area of effort on behalf of Community will be in the discharge of his duties as a member of the station's subcommittee on Moline and East Moline community affairs.

Planning for television

82. Prior to the finalization of Community's program schedule in June 1958, the stockholders of Community were individually assigned various civic, community, governmental, agricultural, educational, religious, and other organizations, groups, and persons to be personally visited by the stockholders to explain Community's television plans and to obtain from them their suggestions as to how Community's station might best serve their needs and interests through television programming. The survey was not limited to the Quint Cities but covered the entire service area proposed to be served by Community. In the initial survey almost all contacts made were by personal interview. The programming suggestions of those contacted were recorded on written-report forms and submitted to Mr. Wodlinger for incorporation in the proposed programming of Community.

83. Thereafter, in July of 1958, Mr. Wodlinger prepared draft copies of detailed descriptions of the formats and contents of all of Community's proposed locally originated programs, incorporating the suggestions of the persons contacted insofar as possible. Copies of these drafts were made available to all Community stockholders. Beginning in August of 1958, the stockholders made a second canvass of all persons and organizations previously contacted. Here again, almost all contacts were by personal interview. On the second visit the person contacted was asked to review the written report of the first visit, confirm its accuracy, and to review the draft program de-

scriptions and make further suggestions if desired. In addition to the "second visit" interviews with those previously contacted, a number of other persons and organizations were contacted for the first time in the second phase of the survey. Further, in the second phase of the survey, contacts were especially queried on the subject of special events and remotes as a result of which Community compiled a list of special event and remote possibilities including sketches and diagrams of buildings and facilities at possible remote locations, possible camera positions in some cases, and the availability of 220-volt power if needed.

84. The written reports of the second-phase interviews were returned and discussed at Community's stockholder meetings, which were held on a weekly basis beginning August 18, 1958, after which they were turned over to Mr. Wodlinger for incorporation in the finalized program descriptions presented by Community in these proceedings. In all, the Community stockholders conducted over 300 personal interviews with program contacts in the course of the 2 phases of the survey. In addition, in August 1958, Mr. Wodlinger directed letters to approximately 700 persons, groups, organizations, churches, educators, and others throughout Community's service area, advising them of Community's plans, offering them the cooperation of the station in making the facilities available on a sustaining basis and soliciting their suggestions as to how the station might serve their needs.

85. The record contains names of persons and organizations contacted, the Community stockholder making the contacts, and the method and dates of contact. A tracing of the contact interviews through the program descriptions establishes that the advance survey conducted by Community weighed heavily in forming the basis for Community's proposed local programs.

86. Wodlinger also directed inquiries by letter to 76 companies and organizations to ascertain the availability of various types of film for television, including educational, documentary, religious, etc., and contacted both UP and AP to make tentative arrangements for wire service.

Testimony of cooperation by public witnesses

87. In addition to evidence of the survey work described above, Community presented the sworn written direct testimony of 13 "public" witnesses from the Quint Cities. These 13 witnesses are among those comprising the very top educational and religious leaders of the community. Their testimony is too extensive to be digested here, but it is obvious that they would cooperate fully with this applicant (of course, there is nothing to indicate they would not cooperate with any of the applicants) in a most active way, personally and by making available the resources of the institutions they represent. Many of the suggestions of these leaders have been incorporated in Community's program proposal.

88. In addition to participating in the advance program survey and in further preparation for their roles in television operations, all of Community's stockholders read and approved Community's program

policy statement, including the NAB Television Code; all of them have familiarized themselves in a general way with certain portions of the Communications Act, the Commission's rules, and the so-called "Blue Book" (with all of which Mr. Wodlinger has had working knowledge and familiarity in his past capacity with WOC-TV); almost all of them visited Community's proposed transmitter and studio sites, and visited and observed television operations at WOC-TV in Davenport. Three of them also visited WHBF-TV in Rock Island. Mr. Hoersch also attended a television operations seminar at WTVJ in Miami, Fla., in 1953. In addition, both Mr. Ainsworth and Mr. Werner investigated the transmitter farm site to assure its suitability as an experimental farm for the station.

Stockholder positions and committees

89. Community proposes various stockholder positions and committees by which supervision of and participation in certain of its day-to-day affairs by its stockholders will be effectuated. A description of the positions and committees follows:

(a) *Director of community affairs*—C. I. Josephson, Jr.—In this capacity, Mr. Josephson, a director of Community, will have primary and overall working responsibility, subject to the guidance and ultimate policy decisions of the board of directors, to assure that Community's station at all times seeks to serve and does serve the programing needs of the area in all segments of listener interest. To aid in the discharge of this function, a community affairs committee was established with Mr. Josephson as chairman and Mr. Mel Foster, Community's president, as vice chairman. In order to accommodate the unusual situation created by the various separate, yet related, communities in the Quint Cities area, and to provide a mechanism representative of all of these communities, as well as the surrounding area, a group of subcommittees was created—for Davenport, Rock Island, Moline and East Moline, Bettendorf, and for the "service area." A special subcommittee for religious affairs, with Mr. Priester as chairman, was also created to assure that all major faiths receive proportionate representation in air time and that the station and the public will receive the benefit of the sources of programing available in the activities of the churches. To each of these subcommittees various Community stockholders have been assigned. The subcommittee on service area affairs was, in turn, broken down to its individual members by assigning to each member a specific list of counties within the service area for which each would be responsible. The purpose of the committee and subcommittees is to establish and maintain contact with all civic, community, agricultural, religious, educational, governmental, and similar organizations, individuals, and groups within the various Quint Cities and the counties within the service area to assure that their needs are properly served by the station on a continuing basis. The various subcommittees have met, organized, and adopted plans for implementing their work. It will be Community's policy to make continuing surveys of area needs through its stockholder committees after going on the air to assure that the changing needs of the public are served. Mr. Josephson, as director

of community affairs, will also play a part directly in the formulation and supervision of particular program formats. The committees are headed as follows: Director of education, Benjamin A. Hartz; coordinator of farm affairs, G. Rodney Ainsworth; coordinator of military affairs, Col. Carl A. Waldmann; director of public relations, Harold W. Hoersch; and director of publicity and sales promotion, Elmer Underwood.

90. A building committee, consisting of Mark Wodlinger, chairman, and Messrs. Harvey, Ainsworth, and C. I. Josephson III, will be responsible for the implementation and supervision of the building and construction plans for the station in cooperation with management and the board of directors.

91. An editorial policy board, consisting of Mel Foster, chairman, and Messrs. Waldmann, French, Underwood, Werner, and Wodlinger (the chairman of the various subcommittees on community and area affairs), as well as the president and general manager of the station, will establish and assure the maintenance of the station's editorial policy on matters as they arise from time to time, subject to the overall policy power of the board of directors.

92. Community's stockholders and directors have adopted a resolution pledging Community to operate its proposed station in accordance with the NAB television code. In addition, Community has adopted a statement of "Program Plans and Policies" which was affirmed by resolution of the stockholders and directors.* Community's policies may be summarized as follows:

(a) *Educational programs.*—Community will devote a considerable portion of its time to educational programing, maintaining liaison with educational institutions in its service area, and keeping abreast of developments in techniques of educational television.

(b) *Youth programs.*—Community will devote its best efforts in developing programing of wholesale entertainment, information, and guidance for youthful viewers. Teenage discussion programs, safe driving, church activity, and youth guidance programs will be encouraged in an effort to develop good citizenship.

(c) *Community affairs programs.*—Community will attempt through programing to foster harmonious relations and understanding as among the several politically separate but geographically related communities in the Quint Cities complex, emphasizing information and creating awareness of the problems of each and the manner in

* An exhibit entitled "Statement of Program Service" and pertaining to policy matters such as the broadcasting of controversial issue programs, local news, religious and educational programs, was contained in Community's original application for channel 8, filed in May of 1957. The record shows that it was identical with exhibits of the same title filed in the earlier Davenport UHF and Miami television applications of Messrs. Foster and Hoersch. An "Amended Exhibit P-3" on "Program Service" filed with the final June 1958 amended application of Community contains some of the language of the earlier original exhibit, above mentioned, but differs from it in other respects. Mr. Hoersch testified that a draft of the final amended exhibit was discussed by Community's stockholders, paragraph by paragraph, and, after suggestions were made, the exhibit was redrafted. There was no evidence that use of the same program policy statement by the same principals in different applications was in any way inappropriate, particularly when it is redrafted and accepted as a current statement of policy. Moreover, the "Program Plans and Policies" exhibit submitted in evidence at the hearing, while consistent with the last amended policy exhibit in the application, is a much more complete statement of policy, is in no way a copy of previous statements, and is the ultimate policy statement unanimously adopted and affirmed by all of the stockholders of Community.

which they may best be solved. Programs designed to air problems and issues of the smaller communities throughout the service area will also have a place in Community's programing.

(d) *Controversial issues.*—Community will offer its facilities as a sounding board for controversial issues, seeking out and developing them through its community affairs director. Equal time will be accorded all sides of controversial issues, preferably on the same program in a forum-type format, using an impartial moderator. The station will assure that all participants are responsible individuals and qualified to represent their positions. Where the station has taken an editorial policy on the issue, an impartial moderator from outside the staff will be used with the station represented on the panel if deemed by it to be desirable.

(e) *News and editorial policy.*—Community's policy is to present wide coverage of news, reported factually and without bias. When commentary is employed, it will be so identified. Community proposes to editorialize, adopting an editorial position on subjects on an ad hoc basis as established by its editorial policy board. Equal time will be accorded opposing viewpoints. The station will not align itself with any political party, subject to its right to take an editorial position for or against any public issue with respect to which political parties or candidates have taken a position. Editorials will be identified as such when broadcast.

(f) *Political broadcasts.*—Broadcasts by political candidates will be carried by Community in accordance with section 315 of the Communications Act, and the Commission's rules and policy pronouncements on the subject.

(g) *Religious broadcasts.*—Community will make its facilities available on a sustaining basis to the churches of all major faiths in the Quint Cities and surrounding smaller communities within the service area on a proportionate, rotational basis.

(h) *Agricultural programs.*—It will be Community's policy to assure adequate time on its station to agricultural interests, maintaining continuing contact with them through Community's coordinator of farm affairs. In aid of this policy, Community proposes the use of its 100-acre farm transmitter site as an experimental farm where new and advanced methods of agriculture can be tested and brought to the television audience.

(i) *Armed services programs.*—It will be Community's policy to assure, through its coordinator of military affairs, that the needs of the Rock Island Arsenal and other armed service units are adequately served. Time will be made available to them on a sustaining basis.

(j) *Advertising and commercial standards.*—Community's policy will be to maintain a reasonable balance as between commercial and sustaining types of programing, endeavoring to maintain a continuing ratio approximate to that specified in its application; i.e., 71.81 percent commercial to 28.19 percent sustaining. Community will also assure that its facilities are always available to Government, community, and civic organizations for noncommercial spot announcements. It will follow the NAB code.

Programs

93. Community submitted a proposed program schedule for a typical week of operation, setting forth the schedule of programs which its station would expect to produce as soon as possible after the station is on the air and operating smoothly. While Community may vary the format of its programs from week to week or at more extended intervals to meet new and changing needs or to make room for the televising of special events and remotes, basically it will adhere to the schedule submitted and will assure that its programming, in terms of content, quality, and balance, is produced in conformity with the typical week's schedule. It was stipulated that all applicants in this proceeding propose to affiliate with the ABC network and that an affiliation would be available to the successful applicant. It was also stipulated that descriptions of network programs would not be admissible in evidence in the direct case.

94. Community proposes to broadcast 116 hours and 45 minutes per week, 7:10 a.m. to 12:05 a.m., Monday through Friday; and 8 a.m. to 12:05 a.m. on Saturday and Sunday. An analysis of Community's programming by type and source follows:

<i>Program type</i>	<i>Percentage</i>
Entertainment.....	56.8
Religious.....	4.8
Agricultural.....	4.1
Educational.....	11.6
News.....	8.8
Discussion.....	4.1
Talks.....	9.8
Total.....	100.0

Program log analysis (percentages)

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
Network commercial (NC).....	23.57	58.29		31.81
Network sustaining (NS).....	2.14	4.38		2.57
Recorded commercial (RC).....	30.00	11.43	58.57	37.41
Recorded sustaining (RS).....	16.43		21.28	11.90
Wire commercial (WC).....				
Wire sustaining (WS).....				
Live commercial (LC).....	11.55	15.00	70.64	12.49
Live sustaining (LS).....	16.31	70.00	8.51	13.63
Total commercial.....	63.12	83.72	70.21	71.81
Total sustaining.....	34.88	14.28	28.79	28.19
Complete total.....	100.00	100.00	100.00	100.00
Proposed broadcast-hours (per week).....	70	35	11:45	116:45
Number of spot announcements (SA) (per week).....	147	113	33	294
Number of noncommercial spot announcements (NCSA).....	98	49	28	175

95. Community proposes to follow the NAB television code in its practice with respect to the number and length of spot announcements allowed in given periods of time. Not more than one commercial spot announcement and one station identification will be permitted between programs. The following standards for commercial time in programs will be followed:

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Length of program (minutes)	Length of advertising message (minutes and seconds) in—	
	Class A time	All other hours
5	1:00	1:15
10	2:00	2:10
15	2:30	3:00
20	2:50	4:00
25	3:00	4:15
30	4:30	5:45
35	5:00	7:00

96. A description of Community's proposed locally originated programs follows:

(a) *Entertainment programs:*

(1) *Music Hour (Part I)*, Entertainment (RC), 9:30-10 a.m., Sunday—A filmed program covering all types of music from symphony to popular, the origin and story of favorite old songs throughout the world.

(2) *Music Hour (Part II)*, Entertainment (LC), 12 noon to 12:30 p.m., Sunday—A live production produced in cooperation with the Tri-City Symphony, the music departments of various school systems in the service area, the Quad-City Music Guild, the Civic Music Association, Handel Oratorio Society, and the music departments of Augustana, St. Ambrose, and Marycrest Colleges.

(3) *Round Up Time (Part I)*, Entertainment (LC), 10:15 to 10:30 a.m., Saturday—This live program, following immediately after "Saturday Cartoons," will feature a singing cowboy, playing the guitar and telling brief stories about the West. He will describe some of the happenings that are going to occur in the following western feature film that starts at 10:30 a.m. Children (including school classes) will be invited to the studio to meet the cowboy and to say hello to their families and friends over television.

(4) *Round Up Time (Part II)*, Entertainment (RC), 10:30 a.m. to 12 noon, Saturday—The third in the consecutive series of Saturday morning children's programs will feature a western film, particularly suited for children's viewing, of full-length duration.

(5) *Story Book Time*, Entertainment (RC), 2 to 2:30 p.m., Saturday—Will consist of children's stories, complete in one episode, using such film series as "Sleepy Joe," a series featuring stories about the famous "Uncle Remus" characters, and the "Hans Christian Andersen Tales." The film story will be preceded by a brief introduction by a female narrator in a home setting.

(6) *Teen Talent Hop*, Entertainment (LC), 2:30 to 3:30 p.m., Saturday—A live studio show with guests selected from the various high schools and junior high schools in the service area, with the help of the various community affairs subcommittees. The teenagers will dance to the recorded music that is played; there will be interviews with the students as to activities and news of their schools. This program will also be used as a vehicle for discovering and developing local talent by inviting young singers, musicians, dancers, actors, etc., to appear and perform. Contests, with scholarship awards to winners, will be conducted.

(7) *Flicker Fantasies*, Entertainment (RC), 4:30 to 5 p.m., Saturday—This filmed show will feature a variety of old silent comedy films. The series will also include sound-on-film comedies, all old vintage.

(8) *Illowas Varieties*, Entertainment (LC), 6:10 to 6:30 p.m., Saturday—This show will feature a group of square dancers, a caller, a master of ceremonies, and guest entertainers. The setting will be in a barnyard.

(9) In addition to the foregoing, Community will present several syndicated and feature film productions as follows: a situation comedy series for

the housewife at 9 to 9:30 a.m., Monday through Friday; an adventure-type series from 10 to 10:30 a.m., Monday through Friday; a full-length feature "Morning Movie" from 10:30 to 12 noon, Monday through Friday; a travelog series from 12:30 to 1 p.m., Monday through Friday; a "Family Theatre," featuring family shows such as "Life With Father," from 6:30 to 7 p.m., Monday only; a full-length feature film on "Theatre 8" from 10:30 p.m. to midnight, Monday through Sunday; and a Saturday morning cartoon show from 10 to 10:15 a.m., the first of a series of three Saturday morning children's programs.

(b) *Religious programs:*

(1) *Bible Story Time*, Religion (LS), Sunday 9-9:30 a.m.—Will utilize outstanding Bible school teachers from the area who will be rotated among the various faiths. Whenever possible, the Bible school class of the teacher will be present in the studio. From time to time, certain parts of the Bible stories will be enacted by the students of the class. The selection of teachers will be made by the ministerial associations, Catholic churches, Jewish synagogues, and independent church groups working with Community's sub-committee on religious affairs. As a result of the program survey made by Community's stockholders, this program will also cover Sunday school and Bible classes on film at the churches for later viewing on the program.

(2) *This Is the Answer*, Religion (RS), 10:30-11 a.m., Sunday—Filmed religious programs, such as a series called "What's Your Trouble," featuring the Rev. Norman Vincent Peale, and "Man to Man," featuring Rev. Gordon M. Jorgensen, will be used in this program which will be devoted to the theme of the solution to everyday problems through spiritual and religious help. An effort will be made to include films from all major faiths.

(3) *Ministerial Association Hour*, Religion (LS), 11-11:30 a.m., Sunday—All faiths and denominations will be represented on a rotating basis on this program which usually will originate in the studio.

(4) *Religious Film*, Religion (RS), 11:30-12 noon, Sunday—This program of filmed religion will, to the extent possible, be alternated among the various faiths on a proportionate basis, using material from the various church organizations.

(5) *This Is the Life*, Religion (RS), 12:30-1 p.m., Sunday—Half-hour dramatization of a real life problem filmed by the Lutheran Church, Missouri Synod, and similar films.

(6) *The Christophers*, Religion (RS), 4-4:30 p.m., Sunday—An inspirational, filmed half-hour religious series featuring well-known personalities of the entertainment world, along with religious leaders.

(7) *Religion in the Home*, Religion (LS), 7:10-7:15 a.m., Monday through Saturday—A brief prayer and inspirational thought to start the program day.

(8) *Evening Prayer*, Religion (LS), 12 midnight to 12:05 a.m., Monday through Sunday—Like the morning devotional program, this program will be conducted by various clergymen from the service area.

(c) *Agricultural programs:*

(1) *Modern Farming (Part I)*, Agricultural (RS), 1:15-1:30 p.m., Sunday—As a result of Community's contacts with county agents, Community plans that this recorded program will feature films of interest to farmers from the U.S. Department of Agriculture Handbook No. 131 and from Iowa State College, Ames, Iowa, and other midwestern agricultural schools.

(2) *Modern Farming (Part II)*, Agricultural (LS), 1:30-1:45 p.m., Sunday—A live discussion of the telecast in part I, described above. This portion of "Modern Farming" will be conducted by the farm director who will discuss the subject with a county agent, State or Federal farm official, or farmers who have had experience in the subject shown in the film presented in Part I. Part II will sometimes originate live from a farm.

(3) *Farm Roundup*, Agricultural (LC), 7:15-7:30 a.m., Monday through Friday—Conducted by the station's full-time farm director, will present brief news headlines, farm weather report, farm markets and crop conditions, including a summary of the previous day's agricultural commodity markets.

including livestock, grain, poultry, etc. This is a complete type of farm program. Various awards are planned for meritorious farm enterprises.

(4) *Farm Almanac*, Agricultural (LS), 12:15 to 12:30 p.m., Monday through Friday—A noontime service to the farmers and farm families, conducted by the farm director. It is planned that county agents who were contacted in the program survey will appear on this program along with other agricultural officials—county, State, and Federal. A summary of the day's market conditions, important forthcoming events such as county fairs, 4-H Club meetings, livestock auctions, etc., will be announced and discussed. It will include sound on film, as well as remotes of local farm interest; also, home economics events.

(5) *Farm Wife*, Agricultural (RS), 8:15 to 8:30 a.m., Saturday—A series of short subjects on film of interest to the farm wife, on such topics as the freezing of fruits and vegetables, better methods of turkey raising, garden and grass information. Films from educational institutions will be used. Community proposes to work with the various county home economics agents and extension groups in the selection of the films to be aired.

(6) *Farmers' Viewpoint*, Agricultural (LS), 12 noon to 12:30 p.m., Saturday—Although classified as "agricultural," it will take the format of a panel-discussion program, the panel consisting of farmers, county or Federal agricultural officials, businessmen, if the subject involves them, and any other pertinent group.

(7) *Farm Time*, Agricultural (RS), 12:30 to 1:30 p.m., Saturday—Films from The Television Film Catalogue of the U.S. Department of Agriculture Handbook No. 131; State University of Iowa, Extension Division, Bureau of Audio-Visual Instruction; from the University of Illinois Visual Aids Service; and from 4-H and Future Farmers of America sources, and films taken on Community's experimental farm and on farms in the service area will be used.

(d) News programs:

(1) *Church News*, News (LS), 8-8:05 a.m., Sunday—This program will give news of the activities of the various churches of the area, their services and special events, with particular emphasis on the "Quint City" churches.

(2) *Rural Church News*, News (LS), 8:15-8:30 a.m., Sunday—News of activities and services of rural churches throughout the service area of the proposed station.

(3) *News and Weather*, News (LC), 8:05-8:15 a.m., Sunday; 8:05-8:15 a.m., Saturday—Ten-minute news and weather shows featuring 8 minutes of local, regional, and national news and 1½ minutes of weather information and forecast, originating in Community's "Window Studio" as a one-camera show.

(4) *News, Weather, Markets*, News (LC), 8-8:15 a.m., 12-12:15 p.m., 6-6:15 p.m., Monday through Friday; 10-10:15 p.m., Monday through Sunday; 3:20-3:45 p.m., Saturday; 1-1:15 p.m., Sunday—News, markets, and weather, produced by the station's news department, with local news gathered by the station's regular news staff and supplemented by part-time reporters and "stringers" throughout the area as needed. Each regular newsmen will be equipped with a silent 16-mm motion picture camera and a Polaroid Land camera. The news department will also have a sound-on-film camera for special interviews and news coverage when sound is advisable. In addition, the sound-on-film camera will be used to record film clips of news off the tube of network newscasts and talks of special interest for later use. Facsimile wire photo still pictures and teletype news ticker service will be used. Community proposes to obtain weather information every hour on the hour with additional data available at 6 a.m., 6 p.m., noon, and midnight.

(5) *Sports News*, News (LC), 6-6:10 p.m., Saturday—A roundup of all final scores of Saturday afternoon football, basketball, and baseball games in season. Incidental film clips and still pictures will be used to illustrate.

(6) *Sports News*, News (LC), 10:15-10:30 p.m., Monday through Sunday—Sports news report each evening conducted by the station's sports

director, featuring up-to-date news from the world of sports, scores of games and contests just completed, interviews with sports personalities, players and coaches from teams in the service area. Incidental film clips will be used of interesting sports events of the day along with still pictures to illustrate.

(7) *This Week in Review, News* (LS), 8:30-9 p.m., Sunday—A review of all local, regional, national, and international news of importance that has occurred during the past week, with news events of especial interest to the viewers in the service area to be emphasized. Prominent persons will discuss the news. This program will be under the supervision of the news director who will act as reporter-commentator and, from time to time, express the editorial position of the station. It will be the news director's responsibility to clear the editorial policy position with the station's editorial policy board.

(e) *Discussion programs:*

(1) *The Light, Discussion* (LS), 10-10:30 a.m., Sunday—A panel discussion of moral, spiritual, and religious problems, under the general supervision of Community's subcommittee on religious affairs, bringing together the religious, spiritual, and lay leaders of the service area on such issues as interfaith understanding and harmony, the religious and moral significance of current events, and related subjects and problems.

(2) *Teenage Viewpoint, Discussion* (LS), 1:45-2 p.m., Sunday—Designed to provide an outlet of self-expression for the teenagers, this panel program will be rotated from among the secondary schools and colleges in the communities served. Teenage problems will be discussed.

(3) *Speak Your Mind, Discussion* (LS), 4:30-5 p.m., Sunday—A panel discussion of a timely topic of local, national, and world interest, with emphasis on local topics. The panel will consist of educators, businessmen, labor leaders, and professional men of the area.

(4) *Letters to the Editor, Discussion* (LS), 9:30-10 p.m., Sunday—Conducted by Community's news director, this program will feature a discussion of local problems submitted by viewers in "letters to the editor," reviewed in advance by the director of community affairs, with the aid of his subcommittees, who will select one or more letters for discussion each Sunday evening. The viewer will also name the local authorities he wishes to have discuss the local questions.

(5) *Panorama Illinois, Discussion* (LS), 9:30-10 p.m., Monday, Tuesday, Thursday, Friday—A series of programs devoted to the use of the many communities throughout the service area in both Illinois and Iowa, designed to stimulate the free expression of opinion and thought on matters of local concern.

(6) *Distaff Side, Discussion* (LS), 1:30-2 p.m., Saturday—A potpourri of discussion tailored to the interest of the women and conducted by Community's woman's director. Community also proposes to use this program for panel discussion of the activities and programs of such organizations as the YMCA, the Scouts, and other youth organizations to acquaint mothers with the facilities available through these agencies.

(f) *Talk programs:*

(1) *Sunday Driver, Talk* (RC), 8:30-9 a.m., Sunday—A film program describing various places in the Middle West and particularly in the service area that the Sunday driver can visit.

(2) *Good Morning Ladies, Talk* (LC), 8:30-9 a.m., Monday through Friday—Under the direct supervision of the woman's director, is scheduled to entertain mother "over the coffee cup." The program will also be used as a vehicle for noncommercial public service announcements of the upcoming activities, meetings, and charity drives of various ladies' groups. Each day the mistress of ceremonies will present one or more local guests for the day from the service area.

(3) *Short Subjects, Talk* (RC), 8:15-8:30 a.m., Monday through Friday—A variety of filmed information ranging from documentaries to sports shorts, travelogs, and U.S. Army films.

(4) *Your Community—Your Government*, Talk (LS), 1-1:15 p.m., Monday through Friday—A live program, conducted under the general supervision of the director of community affairs, featuring interviews of leading citizens and Government officials from throughout the service area, giving an insight into the personalities of these people as well as their jobs and the workings and functions of the organization which they represent.

(5) *Industry in Action*, Talk (RC), 1:15-1:30 p.m., Monday through Friday—The activities of the industries of the area and of the Nation through the medium of film, familiarizing the viewer with the companies operating in the communities in the service area. Films from the National Association of Manufacturers and other sources will also be used to show how various products are made.

(6) *The Arsenal Hour*, Talk (LS), 7-7:30 p.m., Monday—This program will be under the supervision of Community's coordinator of military affairs, the former commanding officer of the Rock Island Arsenal. Each week a segment of the "Arsenal Hour" time will be devoted, on a rotating basis, to one of the armed services, for recruiting and reserve activities and special service functions. This program may vary in format from time to time so as to include films produced by the services and deemed by them to be of particular importance, such as "Your Defense," a film distributed by the Department of Defense.

(7) *The Challenge*, Talk (RC), 8:30-9:30 a.m., Saturday—Films showing some of the health problems of today and the progress being made in the field of medicine, surgery, and dentistry. It is proposed that the program be conducted under the guidance of the medical and dental associations in the communities.

(8) *Kate's Kitchen*, Talk (LC), 9:30-10 a.m., Saturday—This will be done in a kitchen background, with a qualified home economist; recipes from all parts of the world will be featured. It is planned that the foods, eating habits, and customs of a different foreign country or region of our own country will be shown each week.

(9) *Safety First*, Talk (RC), 3:45-4 p.m., Saturday—Produced in conjunction with local police and fire officials, will present films on safety (in all phases of life) from the Illinois Department of Public Safety and the Iowa Safety Commission; the Fire Underwriters Association; fire and casualty insurance companies; the Engineering Extension Service of Iowa State College, Ames, Iowa; the Motor Club of Iowa; and Community's own films taken of local accidents and fires.

(10) *Bowling*, Talk (RC), 5-6 p.m., Saturday—A filmed bowling show featuring the outstanding bowlers of the country in competitive bowling matches.

(g) *Educational programs:*

(1) *Sunrise Semester*, Education (RS), 7:30-8 a.m., Monday through Friday—This is an educational film series presented by Dr. Floyd Zulli, Jr., assistant professor of romance languages at New York University's College of Arts & Sciences. It is produced by Warren A. Kraetzer, director of NYU's office of radio and television. It is a course in modern literature, covering literary selections from the works of Stendhal, Balzac, Dickens, Thackeray, and other authors. Community proposes to develop and telecast college courses for credit in cooperation with certain colleges.

(2) *Humpty Dumpty College*, Education (LS), 9:30-10 a.m., Monday through Friday—This weekday, half-hour, live educational children's program will be conducted by a trained television kindergarten teacher, Mrs. Barbara Gorham, under the supervision of the local school system.

(3) *The Educators Speak*, Education (LS), 1:30-2 p.m., Monday through Friday—This will be under the supervision of Community's director of education, working in cooperation with the various schools and colleges in the area proposed to be served. It is planned to televise this show directly from the classroom from time to time and to design it on a part-time but regularly scheduled basis for in-classroom viewing, as an aid to actual school instruction. Community thinks it may be possible to arrange for college credit in this series. Students will assist in operating studio facilities.

(4) *Educational Film*, Education (RS), 4-4:30 p.m., Monday through Friday—This series of educational films will be under the sponsorship of the Davenport Community School Board. The series will utilize the educational film library of the Educational Television & Radio Center at Ann Arbor, Mich.

(5) *Children's Educational Film*, Education (RS), 4:30-5 p.m., Monday through Friday—Like the 4-to-4:30 p.m. adult educational film program, this series will utilize such Ann Arbor educational children's films as "Buckskin Bob," "The Friendly Giant," and "Mr. Murgle's Music." The program will be designed for children of all ages, with emphasis on those below high school level.

(6) *Saturday Classroom of the Air*, Education (RS), 4-4:30 p.m., Saturday—This filmed educational program will be a series emphasizing science under the sponsorship of the Quint City school systems and will consist of educational films from the Ann Arbor Center and educational films from other sources such as the Encyclopaedia Britannica Film Library.

Special events and remote programs

97. Community proposes a number of special events and remote programs on an irregular basis to be produced either live or on film or, in some cases, as special studio productions.

Proposed staff

98. Community proposes a full-time staff of 66, consisting of the general manager, Mr. Wodlinger, and 6 others in the general administrative department, 7 in the sales department, 30 in the program and production department, and 22 in the engineering department. The regular staff includes, among others, a sales manager, auditor, sales promotion and publicity manager, program director, production manager, educational director-producer, farm director, women's director, news director, sports director, film and art director, and chief engineer. Community's stockholders will also engage in operational activities, supplementing the regular staff, as hereinbefore shown, in part. It is found that the Community staff is adequate to operate the station and effectuate the programing.

Proposed equipment

99. In addition to the usual nontechnical equipment, such as furniture, fixtures, props, scenery, etc., Community will employ all necessary technical equipment, including every item necessary to operate the station and effectuate the programing.

Proposed studios

100. Community's proposed main studios will be located in the Fifth Avenue Realty Building at 1630 Fifth Avenue, a main business street in the heart of Moline's business district. They will occupy 5,600 square feet of floorspace on the street floor, 1,300 square feet on a mezzanine floor, and 7,000 square feet in the basement. Moreover, under Community's option, it has the right to acquire additional office space in the building up to 2,000 square feet. Further, a portion of Community's business, i.e., its comptroller's functions, will be performed in Mr. Bendle's existing offices in the same building. Community will employ two principal studios and a small window studio. Studio A

will be approximately 38'6" by 38'6", while studio B will measure 23' by 22'6", both having ceiling heights of 16'10". The small window studio will face on the street. It can be doubled in size by office space adjustment if found desirable. The projection and control room will "look through" glass windows into both main studios and a small announcer booth studio with glass "opening" to studio B. Adequate space has been allotted for all necessary executive and staff offices, a boardroom, client room, and street level reception room. At the outset Community does not propose to operate with auxiliary studios in locations other than Moline.

101. It is found that the studio facilities of Community are adequate to effectuate the proposed programming.

Other broadcast and media interests

102. Neither Community nor any of its officers, directors, and stockholders has any present ownership, office, or other interest in any radio or television broadcast station or in any newspaper or other media of mass communications, except for a minuscule stock interest by G. Rodney Ainsworth in American Broadcasting-Paramount Theatres, Inc.

Tele-Views News Co., Inc.

103. Tele-Views News Co., Inc. (referred to herein as Tele-Views), is an Illinois corporation, which is also licensed to do business in Iowa. Its officers, directors, and stockholders at the present time are the following:

Name and residence	Residence in Moline-Rock Island-Davenport area (number of years)	Date and place of birth	Position	Number of shares held	Percent of stock held
Edward E. Janov, 2500 24th Ave., Rock Island, Ill.	13	Sept. 24, 1922; Chicago, Ill.	President and director.	81	33 1/4
Ernest Burrows, 4804 14th Ave., Rock Island, Ill.	40	May 27, 1914; Brooklyn, Iowa.	Secretary and director.	81	33 1/4
Louis Janov, 2124 Kohler Dr., Davenport, Iowa.	11	Nov. 6, 1901; Yanou, Lithuania.	Treasurer and director.	81	33 1/4

104. In the event that Tele-Views News Co., Inc., is successful in its application for authority to construct and operate a television channel in Moline, Ill., utilizing channel 8, its officers, directors, and stockholders will be as follows:

22 F.C.C.

Name and residence	Date and place of birth	Position	Percent of stock held
Edward E. Janov, 2500 35th Ave., Rock Island, Ill.	Sept. 24, 1922; Chicago, Ill.	President and director ----	25.08
Ernest Bauwens, 4504 15th Ave., Rock Island, Ill.	May 27, 1914; Brooklyn, Iowa.	Secretary and director ----	25.08
Louis Janov, 2138 Kohler Dr., Davenport, Iowa.	Nov. 6, 1901; Yanou, Lithuania.	Treasurer and director ----	25.08
Jack Schroeder, Indian Hills, Riverdale, Iowa.	Davenport, Iowa.	Chairman, board of directors; chairman, executive committee and director.	1.504
Clark O. Filseth, 415 West Garfield, Davenport, Iowa.	Apr. 7, 1901; Jackson, Minn.	Executive committee and director.	1.504
John A. Hobart, 2320 13th Ave., Moline, Ill.	Nov. 20, 1916; Rockford, Ill.	-----do-----	2.256
Charles Carp, 1533 7th Ave., Moline, Ill.	Moline, Ill.	-----do-----	2.256
Mrs. Flora Schroeder, 903 1/4 West 3d St., Davenport, Iowa.	July 6, 1897; Davenport, Iowa.	-----do-----	1.504
Joe Sirota, 214 Fernwood Ave., Davenport, Iowa.	Jan. 15, 1896; Ukraine, Russia.	-----do-----	11.536
James B. Bowen, 511 West Lombard St., Davenport, Iowa.	Oct. 20, 1907; Timewell, Ill.	Executive committee and director.	2.256

The stock of Mr. Edward E. Janov, Mr. Louis Janov, and Mr. Ernest Bauwens will be held in a voting trust, with Mr. Edward E. Janov as the voting trustee.

105. Messrs. Bowen, Carp, Filseth, Hobart, Schroeder, and Mrs. Schroeder will acquire their stock interest pursuant to stock subscription agreements filed with the Tele-Views' application as amended. In the event a television station franchise is granted to Tele-Views, the present stockholders will, in accordance with the Tele-Views' application as amended, take the necessary steps to increase the authorized stock of Tele-Views News Co., Inc., by amendment of its articles of incorporation to the extent necessary for the fulfillment of the obligations ensuing from the said stock subscription agreements. As used hereinafter, the term "stockholders," when referring to Tele-Views, includes both the present and proposed stockholders unless the contrary is indicated.

History of Tele-Views and biographical data respecting its officers, stockholders, and directors

106. Tele-Views commenced its business as a partnership in early 1951 by publishing the TV Tele-Views magazine which contained, principally, a week-to-week listing of area television programs, and information of interest respecting television programs and personalities. In mid-1951 Tele-Views became affiliated with TV Forecast, Inc., an organization with an interest in the publication of a television guide magazine in other areas, and Tele-Views changed the name of its publication to TV Forecast. At the same time it first incorporated and commenced the purchase of its own printing equipment. Within the next year or two, Tele-Views changed its affiliation to the TV Guide organization and secured a franchise from that organization for the publication of the TV Guide magazine in the Moline-Davenport-Rock Island area and for all or a portion of eight Midwestern States. Tele-Views published TV Guide magazine from that time until June 1956, at which time it sold its franchise and

publishing rights to S.R.B. Publishing Company, a subsidiary of Triangle Publications, Inc. By agreement with Triangle, Tele-Views has continued as the printer of TV Guide for the areas covered by the previously held franchise as well as for additional midwestern areas. Since sale of its franchise rights to TV Guide and except for the publication of a child's coloring book for a number of months dealing with local television programs and personalities, the business of Tele-Views has been that of a printer rather than a publisher.

107. Tele-Views has grown since 1951 from a small business employing approximately 6 people to a business which in its printing activities alone employs approximately 75 people with an annual payroll of approximately \$270,000.

108. Tele-Views is a member of the Davenport, Rock Island, and Iowa Chambers of Commerce, and is a member of the Lithographers Technical Foundation, Inc., a foundation devoted to research, development of techniques, and the exchange of information, in furtherance of the development of the lithographic arts.

109. Since its inception in 1951, Tele-Views has contributed to worthwhile causes in its area. During the time it held the franchise for the publication of TV Guide, it donated quantities of TV Guide to the Association for the Benefit of Retarded Children for sale on street corners and at other locations in the Moline-Rock Island-Davenport area. All proceeds from such sales went to the association. Similarly, TV Guides were donated to various hospital auxiliaries to assist in their fundraising campaigns. At the time Tele-Views was publishing a TV coloring book, quantities of free copies were donated to local orphanages. Moreover, free ads were regularly provided in TV Guide for a wide diversity of worthwhile activities such as the March of Dimes, the Red Cross, and other community endeavors. In 1953 when the sponsor of a bowling league in the nearby Sterling-Rock Falls area dropped its sponsorship, thereby endangering the continuation of this activity, Tele-Views stepped in and assumed sponsorship of the league, made the necessary arrangements with a national bowling association, and assumed many of the costs involved, particularly for prizes. For the past 8 years it has sponsored a bowling team in the local Centralette League.

110. Tele-Views has, in its employment policies, cooperated with welfare agencies and authorities. During the past year, working closely with Mr. W. A. Trantz of Dubuque, Iowa, who is responsible for parole activities in the Davenport area, Tele-Views has employed four or five parolees who appropriate authorities have felt should be provided the opportunity to rehabilitate themselves and become useful members of society. Recently, the welfare authorities in the area responsible for assisting Hungarian refugees from the unsuccessful revolt against Communist domination of their country needed interim assistance for these refugees. Tele-Views employed three such refugees in order to support these efforts.

111. Tele-Views became interested in applying for a television station in this area back in the UHF days.

112. As publishers of TV Guide magazine for a number of years, and printers of TV Guide for a number of years thereafter, Tele-Views

became familiar with the general program fare being offered by various stations in the area and the scope of operations of various stations.

113. *Jack Schroeder* was born on August 21, 1925, and resides at Mounted Route, Bettendorf, Iowa. His precollege education was in the public school system, Davenport, Iowa.

114. Mr. Schroeder enlisted as a naval aviation cadet prior to high school graduation. After completing flight training in January 1945, he served with units in American and Pacific theaters, and was discharged from service on March 6, 1946.

115. From 1946 until 1949 when he entered Drake University in Des Moines, Iowa, Schroeder operated his family's grocery business in Davenport and attended St. Ambrose College, Davenport, Iowa, for two semesters. He entered Drake University in 1949 and the Law School of Drake University in 1950, graduating with an LL.B degree in 1952. On January 1, 1953, he formed a partnership with Clark O. Filseth in the practice of law which has continued to the present time.

116. Mr. Schroeder was elected a State representative in 1950 while still a student at Drake University Law School, representing the 101,000 residents of Scott County, Iowa. He served a 2-year term and was reelected in 1952. In 1954, Mr. Schroeder was elected to a 4-year term as a State senator, representing the 21st senatorial district in Iowa. He has served on a large number of senatorial committees in both sessions of his first term.

117. During his career as a State legislator, Mr. Schroeder has introduced many bills in the legislature. In the first session of the Iowa 57th General Assembly, he introduced 44 bills, and in the second session, he introduced 53 bills. At least 18 of these bills were passed and signed by the Governor.

118. Mr. Schroeder was honored by the Davenport and U.S. Junior Chamber of Commerce in 1955 with an award for being outstanding in the cause of good government. He organized and served as first president of the Iowa Heart Association for Scott County (1954), and is now a director of the organization.

119. In 1955, Mr. Schroeder represented the Governor of Iowa as a delegate to the White House Conference on Education, and in January 1955, he represented the Governor at a conference of midwest Governors and other State officials in St. Louis where highway problems were considered.

120. Mr. Schroeder is a member of the Davenport Junior Chamber of Commerce, and served for 2 years as chairman of its committee for the entertainment of orphans. He is a member of the Davenport Elks Club (since 1946); a 32d degree Mason (since 1946); a member, American Legion (since 1946); a member, Kaaba Shrine (since 1946); member, board of trustees, Drake University Law School, for a term ending in January 1959; member of the Iowa State Bar Association; member of the National Association of Claimants Counsel; and was vice commodore, Rock Island, Ill., Boat Club (1956-57). He is also a licensed pilot and has been since 1946.

121. Mr. Schroeder is chairman of the planning and zoning commission, town of Riverdale, Iowa. He drafted the first zoning ordinances for the town. He is a member of the Parent-Teachers Association, Riverdale School; president of Drake Alumni of Scott County (since 1953); solicitor of funds for St. Luke's Hospital building fund in Davenport; and solicitor of funds for United Fund of Scott County.

122. Mr. Schroeder is married and the father of two children. He is a member of St. Mark's Lutheran Church, Davenport, and serves as legal counsel for that church and for the Iowa Synod of the United Lutheran Church of America. He also serves as a delegate to synod meetings.

123. Mr. Schroeder will serve as chairman of the board of directors, chairman of the executive committee, and director of Tele-Views.

124. *Edward Earl Janov* resides in Rock Island. He was born September 24, 1922, in Chicago, Ill., and was educated in the public schools of Chicago. Mr. Janov served in the Army Air Corps from September 1942 until March 1946. He took basic training at Wichita Falls, Tex.; was in the air cadet training program in 1943-44; and taught courses in radio communications at Truex Field, Madison, Wis., in 1945.

125. Since 1945 Mr. Janov has been an officer of Belle Blind Co., Davenport, Iowa. In 1950, while still an officer of Belle Blind Co., he became a partner of Tele-Views, which is now a corporation. He is president of that company and has held that office for a number of years.

126. As head of Tele-Views, Mr. Janov instituted certain policies in the operation of the business designed to meet community and civic considerations over and above the business requirements of Tele-Views. These have been described above, and included the support of such agencies as the American Red Cross, National Foundation of Infantile Paralysis, Red Cross blood bank programs, and the Heart Fund; the institution of a company policy to hire parolees in cooperation with probation authorities, in order to help in the rehabilitation of men who had paid for their misdeeds by imprisonment and were believed by proper authorities to be deserving of such assistance; the support of community and area women's bowling teams; the employment of refugees and displaced persons of all creeds in cooperation with local charity agencies; the contribution of TV Guide and children's magazines to local hospital and charity agencies, and for the support of drives of the associations for the assistance of mentally retarded children and cerebral palsy victims; and the organization of a 72-hole medal golf competition outside of Moline, Ill.

127. Recognizing the needs of many charitable endeavors which do not necessarily receive the support of civic organizations, Mr. Janov, in 1957, conceived the plan for the principals of Tele-Views to form a philanthropic foundation. The purpose of this nonprofit foundation is charitable in nature and will benefit primarily individuals and causes which do not enjoy popular and recognized support, although they are nonetheless deserving. The foundation was incorporated in May 1958, and remained dormant for a period of time in connection

with Internal Revenue considerations in determining the tax status of an eleemosynary corporation.

128. Mr. Janov is also an officer in Boetje Foods, Inc., Rock Island, Ill., and a partner in Tele-Views Products, Rock Island. He is a 32d degree Mason; member, Masonic Lodge; member of the Rock Island Chamber of Commerce; and a member of the Davenport Chamber of Commerce. Mr. Janov is married and the father of three children. His religious affiliation is with the Tri-City Jewish Center, Rock Island.

129. *Clark O. Filseth* resides in Davenport. He was born April 7, 1901, in Jackson, Minn., was educated in the public school system of Jackson, Minn.; the University of Minnesota (prelegal); and Drake University, LL.B. (1928). He was a member of the Minnesota National Guard from 1919-22.

130. Mr. Filseth entered the practice of law in 1928 in Davenport, Iowa; served as assistant county attorney, Scott County, Iowa, 1930-39; served as Scott County attorney 1939-53; reentered private practice in 1953 in partnership with Jack Schroeder and has continued in that capacity until the present time. He is also vice president, Central Loan Co., Davenport, Iowa.

131. During Mr. Filseth's tenure as county attorney he was in charge of law enforcement officers of Scott County, Iowa. As such, he presided over the enforcement of law which pertained to the violation of State laws in the State of Iowa committed in Scott County. As county attorney he was also legal adviser and attorney for all county officials in performing the functions of their respective office.

132. During the time that he served as county attorney of Scott County, Iowa, Mr. Filseth served a term as vice president and also a term as president of the County Attorneys Association of the State of Iowa.

133. Mr. Filseth now is, and has been, active in a wide variety of civic, cultural, charitable, and professional matters, locally and nationally. He is married and has one son. His religious affiliation is with the St. Paul's Lutheran Church, Davenport.

134. *Ernest Gaston Bauwens* resides in Rock Island. He was born May 27, 1914, in Brooklyn, Iowa; attended public and parochial schools in Davenport and St. Ambrose College, Davenport.

135. Mr. Bauwens was a member of the 185th Field Artillery, Iowa National Guard (1937-41); was a staff sergeant, and instructed in telephone matters for 1 year and in various field instruments for 1½ years. His employment was in the printing trade until 1951 when he became partner and later vice president of Tele-Views, an office he holds at the present time. He was the delegate to the Tri-City Federation of Labor, representing the Tri-City Typographical Union, from 1947 to 1954.

136. Mr. Bauwens is an officer of the Belle Blind & Drapery Co., Davenport, Iowa; officer, Boetje's Foods, Inc., Rock Island; and partner, Tele-Views News Products Co., Rock Island.

137. Like others in this applicant, and the other applicants to this proceeding, Mr. Bauwens is, and has been, very active in a wide variety of community affairs. He is married and has four children.

His religious affiliation is with the Sacred Heart Roman Catholic Church, Rock Island, Ill.

138. *Louis Janov* resides in Rock Island. He was born on December 21, 1902, in Lithuania, and attended the public schools of Chicago. He has been a citizen of the United States since July 7, 1916. Mr. Louis Janov [the father of Edward E. Janov] was employed and self-employed in Chicago food markets until 1945 when he moved to Davenport to establish the business firm known as Belle Blind Co. In 1951 he became a partner in Tele-Views News Co. and later became treasurer of Tele-Views. He is also treasurer, Belle Blind & Drapery Co., Inc., Davenport, and treasurer, Boetje's Foods, Inc., Rock Island.

139. Mr. Louis Janov is a 32d degree Mason and a member of the B'nai B'rith. He is married and has three children.

140. *Charles Carp* resides in Rock Island. He was born on August 9, 1917, in Moline, Ill., and attended the Rock Island public schools.

141. Mr. Carp entered the U.S. Army on April 8, 1944; took basic training at Camp Fannin, Tex.; and then joined the 87th Infantry Division. He went overseas to the European Theater of Operations on October 19, 1944; served with infantry divisions in France, Belgium, and Germany; sustained a shrapnel wound on February 5, 1945, in Prum, Germany; and was hospitalized for 18 months and honorably discharged on August 25, 1946. In addition to area campaign medals, he was awarded the Purple Heart Medal.

142. Mr. Carp was employed in a Rock Island clothing store from 1934-37, starting at a salary of \$7 per week. He worked as salesman, window trimmer, stock clerk, etc. He was employed by People's Furniture Co. as a salesman from 1937-41, and he became a half-owner of the business in 1941. He took a leave of absence from 1944 to 1946 for service in the Armed Forces and returned as an active partner in 1946. In 1955, he became sole owner of the business which is located in Moline.

143. Mr. Carp has been a member of the Moline Association of Commerce since 1956. In addition, he has a creditable record of civic and charitable activity. He is a Mason and a member of the Tri-City Jewish Center. He is married, and has a daughter.

144. *John A. Hobart* resides in Moline. He was born on November 20, 1916, at Rockford, Ill.; attended the Rockford public schools, graduating from Rockford High School in 1933; and the University of Illinois, 1934-38, graduating from the College of Commerce with a bachelor of science degree.

145. Mr. Hobart entered the U.S. Navy in the fall of 1943 with a commission as ensign in the Supply Corps; served 28 months overseas aboard a destroyer tender as supply officer; saw service in the Aleutians, Hawaiian Islands, and Okinawa. He was released from active duty in March 1946, with the rank of lieutenant (junior grade).

146. Mr. Hobart joined the Eddy Paper Corp., Cedar Rapids, Iowa, in 1938. In the fall of 1941 he became assistant manager of Newhouse Paper Co., Moline, Ill., and in 1943 became manager. He held that position until 1943 when he entered service. In April

1946, he started a branch office alone for the C. J. Duffey Paper Co. in Moline, and moved the office to Rock Island in 1947. He now serves as vice president of the C. J. Duffey Paper Co. and manager of the Rock Island Paper Division. The Rock Island Division now has annual volume running into millions, serves a radius of 160 miles, and has 16 employees.

147. Mr. Hobart is a member of several business, sports, and social organizations. He is married, has one son, and his religious affiliation is with the Trinity Lutheran Church, Moline, Ill.

148. *James B. Bowen* resides in Davenport. He was born on October 30, 1907, at Timewell, Ill., and educated in the public school system, Galesburg, Ill.; at the University of Illinois; and at Brown's Business College, Galesburg. Mr. Bowen taught bookkeeping and accounting at Brown's Business College for 3 years; worked as office manager for retail furniture stores until 1938 when he joined State Furniture Co. as office manager, a post he has held to present time. He is also vice president, Dixon Savings Bank, Dixon, Iowa, and owner of the Bowen-Dixon Insurance Agency, founded in 1953.

149. Mr. Bowen served from December 1943 until November 1945 as quartermaster instructor at Army Quartermaster School, Camp Lee, Va., and is a member of American Legion Post, No. 353. He is married and his religious affiliation is with St. Anthony's Roman Catholic Church, Davenport, Iowa.

150. *Mrs. Flora Marie Schroeder* resides in Davenport. She was born on July 6, 1897, in Davenport, and was educated in the Davenport public schools. She operated Schroeder's Market in Davenport with her husband for 27 years and now is retired.

151. Mrs. Schroeder is a member, Danish Brotherhood Society; member, Pythian Sisters; member, Turners Society; member, Masonic Auxiliaries; member, Auxiliaries of St. Mark's Lutheran Church; and her religious affiliation is with the St. Mark's Lutheran Church. She has two children.

Executive committee-advisory committee stockholder participation in operation of proposed station

152. In the event that the application of Tele-Views for authority to construct a television station is granted, Tele-Views will reorganize its operational pattern along the following lines:

153. An executive committee will be created. Mr. Jack Schroeder will be chairman of the board of directors of Tele-Views, and chairman of the executive committee. In addition to Mr. Schroeder, the membership of the executive committee will include Messrs. Clark O. Filseth, John A. Hobart, James Bowen, Charles Carp, and Edward E. Janov. The executive committee will be responsible for the operation of the television station, the making of both day-to-day and long-range policy decisions for the station, and the exercise of a general supervision over the station and its operations. In this fashion the direction of the station operation from the ownership level will be separated from the other business affairs of the applicant, with its direction and decision-making process being clearly understood.

154. An advisory committee has been created and will also be relied upon by the executive committee for assistance and guidance. This advisory committee will consist of outstanding citizens in various walks of life in the area, each of whom is identified in the record and has agreed to serve. It will be added to from time to time in the light of operational experience. The advisory committee will meet with the executive committee and its chairman from time to time, with formal meetings at least on a monthly basis, to discuss and consider with the executive committee the particular matters which appear to warrant the special attention of the station, and the ways in which such attention can best be provided.

155. The applicant will not delegate to the advisory committee control of its proposed station or the authority to make program decisions. However, it has the most serious intent to utilize and rely upon the services of the advisory committee as greatly as possible, and on a regular basis, as one important means for securing the advice and area cooperation needed to fulfill its proposals effectively.

156. The stockholders and directors of Tele-Views News Co., Inc., will assume and discharge an overall continuing and regular responsibility with respect to the operation of the station and the determination of its policies.

157. The chairman of the executive committee will normally consult with the general manager on a daily basis. The executive committee will meet frequently for the determination of station policies, consultation with the general manager of the station and other appropriate personnel, and resolution of station problems. In addition, each member of the executive committee, as well as other stockholders, normally will be available whenever any particular matters require special meeting or consideration. Each one of the stockholders and members of the executive committee will be able to devote as much time as may be required for the television station, and will bring his own background to bear on a continuing basis.

Staff, consultant, facilities, and equipment

Staff and consultant

158. The parties to this proceeding have all stipulated that a competent staff would be available to the successful applicant. Tele-Views will, if it is successful in its application, secure the most competent staff available, with preference being accorded local residents to the extent they possess the necessary qualifications. Tele-Views has retained as its television consultant for program and operational advice and assistance, both in this hearing proceeding and for subsequent construction and operation, Mr. Paul Burnham Mowrey, an authority of national and widespread experience in the television field. One of the functions to be performed by Mr. Mowrey in the event that Tele-Views is successful in its application will be that of assisting the permittee in the evaluation and selection of prospective personnel. All employees will be U.S. citizens. Whenever practical, residents of the local area, if properly qualified, will be given preference.

159. The Tele-Views staff will be as follows:

- | | |
|-----------------------------|------------------------------------|
| 1. General Administration: | 5 Producer-directors. ¹ |
| 1 General manager. | 5 Announcers. |
| 1 Comptroller. | 2 Newscasters. |
| 2 Secretaries. | 1 News editor. |
| 2 Receptionist-secretaries. | 1 Photographer. |
| 2 Janitors. | 1 Film editor. |
| | 2 Film technicians. |
| 2. Sales: | 2 Secretaries. |
| 1 Commercial manager. | 1 Artist. |
| 4 Salesmen. | 4. Technical: |
| 2 Traffic clerks. | 1 Chief engineer. |
| 2 Continuity clerks. | 17 Engineers. |
| 4 Secretaries. | 3 Utility-maintenance engineers. |
| 3. Production: | |
| 1 Program manager. | |
| 1 Executive producer. | |

¹ One producer-director will be the director and liaison officer for community and area activities, and will report to the general manager as well as the program manager.

160. The only staff member already selected is Mr. Herbert Weinberg, the producer-director who will serve as public service director. Mr. Weinberg resides in Rock Island. He was born on June 2, 1926, in Philadelphia, Pa.; educated in the public schools of Camden, N.J., graduating from Camden High School in June 1944; and attended Gratz College (1943-44, 1946-47), Philadelphia, Pa.

161. Mr. Weinberg is married. His religious affiliation is with the Tri-City Jewish Center, Rock Island, Ill. He has had a wide variety of military, civic, cultural, and journalistic experience.

162. Mr. Weinberg's duties as public service director of Tele-Views will be as follows: He will report both to the general manager and the program director and be responsible for all public service programming. He will be the liaison between the advisory committee, the general manager, and program director, and it will be his responsibility to see that the public service commitments of the station are carried forth. He will work with the executive producer and producer-directors. He will, from time to time, act in the role of moderator for discussion programs and will appear on a regular weekly talk program Saturday evenings. It will be his responsibility to keep informed on all public service happenings, personalities, and events that would be of interest to the viewers in the proposed coverage area.

Studio facilities

163. The proposed studios of Tele-Views will be located on Seventh Street in Moline. The building is adaptable for conversion to a television plant, and for use as a television studio facility. It is presently occupied by a restaurant and provides adequate entrances and exits, toilet facilities, power and light. The proposed site also provides ample parking facilities.

164. It is the plan of the applicant to utilize part of the extensive property surrounding the proposed studio building for experimental and demonstration farm activities in conjunction with the applicant's agricultural programming.

165. The proposed studio building will house two studios (A and B), master control, telecine, and provide considerable office space for the applicant's operation. Halls and stairways are ample for the heavy traffic in television operations. The present building has two dumbwaiters, running from the basement floor to the second floor. It is the plan of the applicant to utilize these dumbwaiters to expedite film handling from the basement to the master control room, located on the first floor. Spacious rehearsal hall facilities have been provided, allowing the applicant sufficient room for extra rehearsal time. The control room of studio A will be raised to allow the technical and production crew to have a clear line of sight into studio A.

166. The art and carpentry shop will be at one end of the scenery prop area. The telecine room will be located in the master control room. The telephone company terminal and equipment space will be assigned to the storage area beneath studio A. Air-conditioning and heating equipment will also be assigned to this same area. The mail and receiving room will be located in the basement area presently allocated to film storage. The receptionist and PBX switchboard will be located on the left-hand side of the lobby, off the main entrance of the proposed studio. Garage facilities will be made available adjacent to the studio on the proposed property. It is found that the studio facilities will be adequate to effectuate the operation and programming proposed.

Technical facilities

167. The operation proposed by Tele-Views on channel 8 will include two live television studios, a master control room, a telecine room, transmitter, antenna, and a remote unit. Equipment facilities employed in these areas will in all cases meet the required standards of the Federal Communications Commission. It is found that the technical facilities will be adequate to effectuate the operation and programming proposed.

Program and related proposals—general preparation

168. The basic program proposals presented by Tele-Views in its application and in this proceeding, in terms of classification of programs by type and source, resulted from the general knowledge and experience of Tele-Views in its community and area, the experience and general knowledge gained by Tele-Views through its publication of TV Guide, the advice of its counsel, and the advice of Mr. Paul Burnham Mowrey, television consultant for Tele-Views. In addition, it has made numerous "contacts" with persons in virtually all significant areas of community and area activity in order to secure the benefits of their experience and talents, and has relied upon them.

169. Discussions and meetings have been held by present and proposed stockholders of Tele-Views for the purpose of determining the policies that will govern the operation of the station for which Tele-Views seeks an authorization from the Federal Communications Commission. Considerable attention has been given to the community and area role that might be played by a new station. In this connection, both the present and proposed stockholders (referred to hereafter as the stockholders) have been apprised of basic rules and

policies of the Federal Communications Commission respecting the construction and operation of television stations and of the general content and purpose of the television code of the National Association of Broadcasters (NAB).

General policy

170. It will be a basic policy of Tele-Views to pinpoint clearly the responsibilities for compliance with applicable FCC rules and policies, as well as other applicable legal requirements, to devise its records with this in mind, to take such other steps as may be needed to remain apprised of Commission and other requirements, and to assure compliance with them. The stockholders recognize that a grant of the Tele-Views' application would, in effect, place upon them a public trust requiring strict adherence to the rules specified by the responsible authorities. The stockholders have agreed that the principles relating to overall policies of a television station contained in the television code of the NAB are generally desirable. Tele-Views proposes to become a member station of the association and be guided by its code.

171. Tele-Views will provide a local transmission service to all significant communities and areas within its coverage pattern. It proposes to come into the community as a television operation "with a strong, positive, and vital approach to public service." It will affirmatively endeavor to bring about extensive use of the station and its facilities by community and area civic, cultural, and similar interests. It will initiate activities off-camera that tie into the public service program efforts of the station and the community and area interests involved.

172. It will be a basic policy of Tele-Views to spotlight and direct public attention to matters of important area interest; to support affirmatively measures necessary for continued community improvement; to select subjects for special attention on the basis of community and area civic and political importance rather than the popularity or unpopularity of the subject; to comment and editorialize, taking all steps necessary to assure (1) accuracy and reliability of the data and information upon which reliance is placed, and (2) full presentation of opposing viewpoints. All such station comment and editorialization will clearly be labeled as such. One program, "Topics of the Day," will be the "editorial page" through which the station can take a publicly identified position.

173. If Tele-Views is the successful applicant, it proposes to be affiliated with the American Broadcasting Co.

174. The proposed typical week's programs reflected in the Tele-Views' schedule does not take into consideration special community and area events, one-time public service programs in support of community drives, elections, etc. Nor does it provide for such special programs as these based upon county fairs, agricultural week, and other typical community or area activities which occur throughout the year on a one-time or occasional basis. However, it is the intention of Tele-Views to provide coverage for such special events and activities even though this may require rearrangement of regular schedules to permit effective coverage of such special events.

Program classifications proposed

175. Tele-Views proposes the following program structure in terms of the definitions and classifications contained in section IV of FCC Form 301:

	Percent			
1. Entertainment				66.18
2. Religious				3.81
3. Agricultural				3.96
4. Educational				6.67
5. News				7.92
6. Discussion				4.17
7. Talks				7.29

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	Percent	Percent	Percent	Percent
Network commercial (NC).....	23.88	73.57		34.79
Network sustaining (NS).....	1.49			.83
Recorded commercial (RC).....	30.60	8.57	55.09	27.85
Recorded sustaining (RS).....	2.24		.46	1.32
Wire commercial (WC).....	2.24	4.29	6.96	3.54
Wire sustaining (WS).....				
Live commercial (LC).....	11.07	7.14	26.85	12.29
Live sustaining (LS).....	28.48	6.43	10.65	19.38
Total commercial.....	67.79	93.57	88.89	78.47
Total sustaining.....	22.21	6.43	11.11	21.53
Complete total.....	100.00	100.00	100.00	100.00
Proposed broadcast-hours (per week).....	70	35	15	120
Number of spot announcements (SA) (per week).....	180	170	65	395
Number of noncommercial spot announcements (NCSA) (per week).....	160	100	65	315

Religious programming

176. Tele-Views will provide free air time to the various religious denominations in the area and will encourage use of the station's facilities and personnel by them. It will not sell time for local religious programs.

177. The scheduling of nonnetwork religious programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	Religion for Sunday.....	9:30-10 a.m.....	¼ hour.
	Religious program.....	10:30-11:30 a.m.....	1 hour.
	Religion.....	2:30-3 p.m.....	¼ hour.
Sunday through Saturday.....	Prayer.....	12:25-12:30 a.m.....	35 minutes.
Monday through Friday.....	Meditation.....	6:30-6:35 a.m.....	25 minutes.
Tuesday and Thursday.....	Religious program.....	11:30-12 noon.....	1 hour.
Saturday.....	Meditation.....	9:30-9:35 a.m.....	5 minutes.
	Religious program.....	11-11:30 a.m.....	¼ hour.

Weekly total hours, 4 hours 35 minutes.

178. A summary of the nonnetwork religious programs proposed by Tele-Views is as follows:

- (1) *Meditation-Prayer and Religion for Sunday*, 6:30-6:35 a.m., Monday through Friday; 9:30-9:35 a.m., Saturday; 12:25-12:30 a.m., Sunday through Saturday; 9:30-10 a.m., Sunday, Religious (LS). "Meditation" and "Prayer" will offer a brief religious message at the open and

close of each telecasting day, coordinated with and rotating among the various faiths in the area. "Religion for Sunday" (9:30-10 a.m.) will present a live studio sermon delivered by an ordained member of the clergy with appropriate musical background to supplement the spiritual message.

(2) *Religious Program*, 10:30-11:30 a.m., Sunday, Religious (LS). This will be a weekly series of religious programs presented by the various faiths in the coverage area.

(3) *Religious Program*, 2:30-3 p.m., Sunday, Religious (LS). This will be a series of religious programs planned and coordinated with the various religious groups in the coverage area. For example, mass could be televised for this series, or programing could be adapted to cover religious themes such as: Special church and temple ceremonies, special observances of Holy Days, special religious rites such as ordinations, weddings, christenings, bar mitzvahs, communion and baptisms, and Bible instruction.

(4) *Religious Program*, 11:30-12 noon, Tuesday and Thursday, Religious (LS). These programs will be designed to promote the religious institutions in the area by presenting news and features concerning their services.

(5) *Religious Program*, 11-11:30 a.m., Saturday, Religious (RS). This program will present religious films of top quality and good taste, endeavoring to meet the needs of all faiths in the area.

179. The programs proposed by Tele-Views in the category of religion reflect and accommodate the suggestions secured through program contacts with religious leaders in the area.

Agricultural programing

180. The schedule of nonnetwork agricultural programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	Agriculture of the Week.....	10:30-11 p.m.....	½ hour.
Monday through Friday.....	Farm Program.....	6:35-6:45 a.m.....	30 minutes.
Tuesday and Thursday.....	.....do.....	7:30-8 a.m.....	1 hour.
Wednesday, Thursday, and Friday.....	.....do.....	2:30-3 p.m.....	1½ hours.
Saturday.....	.....do.....	9:35-10 a.m.....	25 minutes.
	.....do.....	11:30-12 noon.....	½ hour.

Weekly total hours, 4¾ hours

181. A summary of the nonnetwork agricultural programs proposed by Tele-Views follows: Tele-Views has developed its agricultural program plans in consultation with agricultural authorities in that area. Tele-Views will continue to do so and to utilize such persons to the greatest possible extent in its agricultural programing.

(1) *Agriculture of the Week*, 10:30-11 p.m., Sunday, Agriculture (LC). Each week this program will present county agents in the area and other figures of significance in the field of agriculture in a series of interviews and discussions on local farm problems and practices. The National Grange, the Farmers Union, the Future Farmers of America (FFA), the 4-H Clubs, etc.; county agents, the Farm Bureau, and the Rock Island County Farm will be utilized. Also invited to participate in this series will be representatives of the farm equipment industry to present and demonstrate the newest innovations in the field of farm machinery.

(2) *Farm Program*, 6:35-6:45 a.m., Monday through Friday, Agriculture (LC). This will be a news-weather-market report show for the agricultural families designed to be of special interest to farm interests.

(3) *Farm Program*, 7:30-8 a.m., Tuesday and Thursday; 9:35-10 a.m., Saturday, Agriculture (LS) (Tuesday and Thursday), Agriculture (LC)

(Saturday). This program will be directed to the social and civic activities taking place in rural areas. The format will be one in which a host or hostess presents guests, officials, school authorities, businessmen, etc., from the various rural towns and areas within the service area of the station whose economy is based principally on agriculture.

(4) *Farm Program*, 2:30-3 p.m., Wednesday, Thursday, and Friday, Agriculture (LC). This program, while aimed specifically at the farm audience, will be so designed as to appeal in content to as wide a general audience as possible. It will be both an informative and a "do-it-yourself" type of program dealing with vocational agriculture in its broadest sense.

(5) *Farm Program*, 11:30 a.m.-12 noon, Saturday, Agriculture (LS). This weekly program will be produced with the cooperation of the various departments of agriculture in the coverage area. It will feature home demonstration clubs and material from other sources, with the aim to provide homeowners with ideas which can be adapted to their own homes and gardens.

182. It is the plan of the applicant to utilize part of the extensive property surrounding the proposed studio building for experimental and demonstration farm activities in conjunction with the applicant's agricultural programming.

183. The "agricultural" proposals of Tele-Views reflect and accommodate the suggestions received through program contacts with agricultural authorities in the area.

Educational programming

184. Tele-Views proposed in its educational programming to work closely with authorities at all levels of educational activity in order to provide and improve both home and school educational opportunities for those within its service area. In its proposals herein, Tele-Views has sought to recognize and accord weight to the views and suggestions of the many educational authorities in its area with whom contacts have been made, and to the availability of assistance and talents indicated by these contacts. Tele-Views has as one of its objectives for the coverage area of its proposed station the introduction, on a substantial basis, of courses for credit and the development of programs that will serve usefully as an in-school aid to teaching. They would also be designed for general appeal.

185. The schedule of nonnetwork educational programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	Educational Program.....	11:20-12 noon.....	½ hour.
	.....do.....	2-3:20 p.m.....	Do.
Monday through Thursday.....	.....do.....	8-8:20 a.m.....	2 hours.
Monday through Friday.....	.....do.....	1:20-2 p.m.....	2½ hours.
Monday.....	Time for Teen Agers.....	4:20-5 p.m.....	½ hour.
Friday.....	Children's Program.....	8-8:20 a.m.....	Do.
Saturday.....	Educational Program.....	10-10:20 a.m.....	Do.
	.....do.....	10:20-11 a.m.....	Do.

Weekly total hours, 7½ hours.

186. A summary of the nonnetwork educational programs proposed by Tele-Views follows:

(1) *Educational Program*, 11:30 a.m.-12 noon, Sunday, Education (LS). This program will be a Sunday Bible class on the air. It will be conducted

under the auspices and direction of such institutions as the Augustana Theological Seminary in Rock Island, Ill.

(2) *Educational Program, 3-3:30 p.m., Sunday, Education (LS).* This program will be a series devoted to the general field of art. It will be planned and directed under the supervision of the Municipal Art Gallery of Davenport, Iowa. Art classes would be held, in addition to basic instruction in oils, pen-and-ink sketches and watercolors, in portraits, mosaics, and ceramics.

(3) *Educational Program, 1:30-2 p.m., Monday through Saturday, Education (LS).* This series of programs will be devoted to the field of education and instruction, planned and coordinated with and presented by or on behalf of recognized institutions of learning in the coverage area. It will be designed to appeal to the widest and broadest interests of the viewing public as well as to institutions of learning with a view to its use as part of in-class instruction. The Monday-through-Thursday segment of this series would be a "TV College" program. This TV College of the Air would be conducted by various colleges and universities in the area. The participating institutions would plan the series in order to assure educational soundness.

187. Various suggestions by representatives of schools of higher learning have been brought forward for consideration in connection with courses to be taught. The following curriculum is typical of that proposed for this program:

(1) *Monday—Course in Agriculture:*

Swine production:

- a. Selection of sow and boar.
- b. Care of bred sow.
- c. Care of sows and pigs at weaning time.
- d. Care and feeding of baby pigs.
- e. Fattening of hogs.
- f. Marketing.

This program would be produced by or on behalf of the Extension Department of the School of Agriculture, University of Illinois, whose cooperation has been promised. The series as planned would also include the cooperation and interest of the farm implement industry.

(2) *Tuesday—Course in Consumer Economics.*—This would be a series of educational programs devoted to the general and broad aspects of consumer economics. (Produced by or on behalf of Marycrest College, Davenport.)

(3) *Wednesday—Language Course.*—This would be a course in basic conversational language, produced under the auspices of Knox College of Galesburg or other educational institutions in the area. Dr. Herman R. Muelder, dean of Knox College, has suggested a course in the Russian language as one of several that he, as an educator, would deem excellent for the television classroom.

(4) *Thursday—Course to be presented by Moline Community College.*—This would be a series of studies planned and conducted by the Moline Community College, Moline.

(5) *Friday—Course in Music Appreciation.*—This would be a series of programs planned and conducted by the music department of the public school system of Davenport, Iowa. It would be a series devoted to music, instruments, compositions, composer, etc., with the participation of school system's music, instructors, and students. The Rock Island, Ill., public school system has indicated a desire to participate in a series as has the Catholic parochial schools of Rock Island, and the Moline public schools. This series would be of an instructional nature rather than a general type of school program. The programs would be designed so that they could be aired by all schools in the coverage area as a supplement to in-class instruction.

188. The format of the educational series in which area schools have indicated a desire to participate will be designed by the schools them-

selves. Matters pertaining to courses, texts, instructors, and general policies will be developed by the schools involved in close liaison with the station.

(1) *Educational Program*, 10-10:30 a.m., Saturday, Education (LS). This program will be coordinated with the board of education and will feature a vocational shop instructor from one of the public schools in the coverage area. It will be primarily a "do-it-yourself" session, presented by or on behalf of local educational organizations.

(2) *Educational Program*, 8-8:30 a.m., Monday through Friday, Education (LS). These programs will be especially designed for preschool children and will feature such activities as playing games, singing, arts and crafts, storytelling and other similar nursery school projects. It will be conducted by a fully qualified teacher and will be presented by or on behalf of local educational organizations.

(3) *Time for Teen-Agers*, 4:30-5 p.m., Monday, Educational (LS). This program will be presented by or on behalf of local educational organizations and will emphasize vocational guidance and consideration affecting the choice of a particular vocation or career. It will feature vocational guidance counselors from area high schools and educational institutions, as well as laymen.

(4) *Educational Film*, 10:30-11 a.m., Saturday, Education (RS). This program will schedule educational films produced and distributed by colleges and universities throughout the country.

News programming

189. It will be the policy of Tele-Views to emphasize news coverage. Timely and important news events, either locally, regionally, nationally, or internationally, will be aired promptly and, if the matter involved is of sufficient importance, regular programs will be interrupted, rescheduled, or canceled in order to accomplish this objective. Tele-Views will utilize news facsimile machines, its own local news department, and at least two news services.

190. The local news department will utilize "stringers" in the outlying areas so that as local happenings occur in those areas, these "stringers" will be able to feed the news to the station immediately. The "stringers" will be equipped with 16-mm motion picture sound cameras and Polaroids to enable them to shoot both sound and still pictures. When news of an important nature occurs in the coverage area, Tele-Views will be prepared to send its mobile unit to the scene and, whenever possible, will transmit, directly, live news as it is happening. The news department will have auxiliary equipment such as a 16-mm Ciné-Kodak Special and a single system Orthicon. It will also utilize national news.

191. The schedule of nonnetwork news programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	News in Review.....	10-10:30 a.m.....	1/4 hour.
	News and Weather.....	10-10:15 p.m.....	1/4 hour.
Monday through Friday.....	News.....	8:20-9 a.m.....	2 1/4 hours.
	News and Weather.....	6:45-7 a.m.....	1 1/4 hours.
Monday through Saturday...	News, Weather, and Market.	12-12:15 p.m.....	1 1/4 hours.
	News.....	10-10:15 p.m.....	Do.
Monday.....	Area Program.....	11:20-12 noon.....	1/4 hour.
	News.....	10:15-10:30 p.m.....	1/4 hour.

Weekly total hours, 8 1/4 hours.

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192. A summary of the nonnetwork news programs proposed by Tele-Views follows:

(1) *News in Review*, 8:30-9 a.m., Monday through Friday; 10-10:30 a.m., Sunday, News (LC) (Monday through Friday), News (LS) (Sunday). This will be an informative, up-to-the-minute news presentation, evaluated by a staff newscaster, emphasizing, primarily, events and actions in the Quad Cities area, supplemented by films and slides, and produced locally by the station. Also included will be a review of current happenings on the national and international scene. On Sunday, the format of this program will include a summary of the highlights of the past week and matters which appear to be heading for news importance in the coming week.

(2) *News-Weather*, 10-10:15 p.m., Sunday; 10:15-10:30 p.m., Monday, News (LC). This will be a comprehensive late summary of news and weather.

(3) *News-Weather-Market Reports*, 6:45-7 a.m., Monday through Friday; 12 noon-12:15 p.m., Monday through Saturday; 10-10:15 p.m., Monday through Saturday, News (WC). This will be a 15-minute program of up-to-date news coverage and weather bulletins, including both national and local news, drawn from a national wire service as well as local production, and presented voice over film by a staff announcer. Market reports will receive greater attention on Monday, Wednesday, Friday, and Saturday.

(4) *Area Program*, 11:30 a.m.-12 noon, Monday, News (LC). On Mondays this program will be devoted to special news coverage of local nature and of "feature" type.

Discussion-Talk-Editorializing

193. Tele-Views will, as a matter of basic policy, present a thorough and carefully planned program of talk and discussion programs dealing with matters of National, State, and local interest, civic, cultural, and social activities, sporting events, etc. Special care will be taken to assure full and fair presentation of controversial matters through qualified representatives of the opposing viewpoints and through the station's own efforts.

194. The schedule of nonnetwork discussion programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	Discussion Program.....	6-6:30 p.m.....	½ hour.
Monday, Wednesday, and Friday.....	.....do.....	10:30-11 a.m.....	1½ hours.
Monday, Tuesday, Thursday, and Friday.....	Guest for Today.....	6-6:15 p.m.....	1 hour.
Tuesday.....	Panel Time.....	4:30-5 p.m.....	½ hour.
Wednesday.....	Guest for Today.....	6-6:30 p.m.....	Do.
Saturday.....	Discussion Program.....	6-6:30 p.m.....	Do.

Weekly total hours, 4½ hours.

195. A summary of nonnetwork discussion programs proposed by Tele-Views follows:

(1) *Discussion Program*, 6-6:30 p.m., Sunday, Discussion (LS). This will be a roundtable type of presentation, with a qualified moderator. Participating will be civic leaders in the community, representatives of various municipal and county offices, prominent medical and public health officials, educators and such visiting celebrities, and others whose special expertise and accomplishments qualify them to contribute constructively to the consideration of subjects of importance to the area, as well as of national and international significance.

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(2) *Discussion Program*, 10:30-11 a.m., Monday, Wednesday, Friday, Discussion (LS). These programs will be designed to inform the general public of the services, activities, Government officials and agencies, social welfare organizations, service clubs, and business and industry groups and their importance and needs from a community and area viewpoint. A panel format will be used.

(3) *Guest for Today*, 6-6:15 p.m., Monday, Tuesday, Thursday, Friday; 6-6:30 p.m., Wednesday, Discussion (LS). This program would be designed to present, in an informal manner, persons of interest from various walks of life in the coverage area of the station.

(4) *Panel Time*, 4:30-5 p.m., Tuesday, Discussion (LS). This would be a panel-type program with area youth participating in discussions on topics of particular interest to young people, ranging from dating to reading and voting. From time to time the panel would include experts in the field of teenage behavior and problems.

(5) *Discussion*, 4-4:30 p.m., Saturday, Discussion (LS). This program will be planned with the cooperation of librarians in the coverage area and will be basically a "book showcase."

196. The schedule of nonnetwork talk programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday	Topics of the Day	12-12:30 p.m.	¼ hour.
	Sports of the Week	10:15-10:30 p.m.	¼ hour.
Monday through Friday	Women's Program	11-11:30 a.m.	2¼ hours.
Monday	Preview Time	2:30-3 p.m.	¼ hour.
Tuesday through Saturday	Sports	10:15-10:30 p.m.	1¼ hours.
Wednesday and Friday	Area Program	11:20-12 noon	1 hour.
Saturday	Talk	6:15-6:30 p.m.	¼ hour.

Weekly total hours, 6¼ hours.

197. A summary of the nonnetwork talk programs proposed by Tele-Views follows:

(1) *Topics of the Day*, 12 noon-12:30 p.m., Sunday, Talk (LS). This will be a live, sustaining program regarded by Tele-Views as one of particular importance in its proposed program schedule. It will be a basic policy of Tele-Views vigorously and aggressively to spotlight and direct public attention to matters of important area interest.

(2) Areas of programming proposed are: (a) Metropolitan or area planning; (b) industrial expansion; (c) youth program; (d) school organization, facilities, and personnel; (e) scholarship funds for worthy students; (f) an annual public affairs forum; (g) special reports by elective and appointive officials; (h) encouragement of local symphony, art, and theater endeavors; and (i) community and area information projects, tours, etc.

198. The above are illustrative of the type of subject matter that the station would explore, publicize, present fully from a factual viewpoint, and editorialize about in this program segment.

199. *Sports of the Week*, 10:15-10:30 p.m., Sunday, Talk (LC). This program will feature a popular local sportscaster in a presentation of sports news, interviews, and editorials.

200. *Women's Program*, 11-11:30 a.m., Monday through Friday, Talk (LS). This will be a program comprised of various matters of feminine interest such as home management, beauty culture, child care and psychology, cooking, gossip columns, fashions, market tips, family health problems, and women's clubs and organizations and their projects.

201. *Preview Time*, 2:30-3 p.m., Monday, Talk (LC). This program will be devoted to a résumé of the week's program features, special events, functions, and exhibitions scheduled to take place in the coverage area.

202. *Sports Today*, 10:15-10:30 p.m., Tuesday through Saturday, Talk (LC). This will be a concise commentary on local and national sports presented live by a staff announcer with some interviews and film "flashbacks."

203. *Area Program*, 11:30-12 noon, Wednesday and Friday, Talk (LS). On Wednesdays and Fridays this program will present a "Community Calendar of Events."

204. *Talk*, 6:15-6:30 p.m., Saturday, Talk (LS). This weekly program will be the equivalent of a column on entertainment activities in the coverage area—radio, television, nightclubs, theaters, movies, and social events.

205. The schedule of nonnetwork entertainment programs proposed by Tele-Views is as follows:

Day	Title	Time	Total
Sunday.....	Sunday Movie.....	12:30-2:30 p.m.....	2 hours.
	Movie.....	11-12:25 a.m.....	1 hour 25 minutes.
Monday, Wednesday, and Friday.....	Information Program.....	7-8 a.m.....	3 hours.
Monday through Friday.....	Syndicated Film.....	12:15-1:30 p.m.....	3½ hours.
Monday, Wednesday, and Friday.....	Feature Film.....	9-10:30 a.m.....	7½ hours.
Monday through Saturday.....	Musical Program.....	2-2:30 p.m.....	1½ hours.
Tuesday and Thursday.....	Movie.....	10:30-12:25 p.m.....	11½ hours
	Information Program.....	7-7:30 a.m.....	1 hour.
	Syndicated Film.....	10:30-11 a.m.....	Do.
	Information Program.....	12:15-1 p.m.....	1½ hours.
	Syndicated Film.....	1-1:30 p.m.....	1 hour.
Tuesday and Thursday.....	do.....	2-2:30 p.m.....	Do.
Tuesday.....	Preview Time.....	2:30-3 p.m.....	½ hour.
Wednesday, Thursday, and Friday.....	Town Program.....	4:30-5 p.m.....	1½ hours.
Saturday.....	Movie Time.....	12:15-3 p.m.....	1½ hours.
	Syndicated Film.....	4:30-5 p.m.....	½ hour.
	Information Program.....	5-5:30 p.m.....	Do.
	Syndicated Film.....	5:30-6 p.m.....	Do.

Weekly total hours, 41 hours 25 minutes.

206. A number of these programs, in addition to entertainment, emphasize informational and discussion aspects.

Financial qualifications of Tele-Views

207. Tele-Views proposes to construct a new television broadcast station on channel 8 with the main studios at Moline, Ill. The equipment will be purchased from RCA at a cost of \$686,965, broken down as follows:

(a) Transmitter, antenna and transmission line.....	\$305,757
(b) Transmitter input and monitoring equipment.....	13,818
(c) Microwave system and color monitor equipment.....	17,669
(d) Tower equipment and services.....	127,152
(e) Line studio equipment.....	58,427
(f) Film room equipment.....	70,170
(g) Control room equipment.....	27,823
(A) Remote equipment.....	58,480
(i) Test equipment.....	7,067

Total..... 686,965

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The cost of equipment includes a charge of \$60,610 for the installation of the ground system and the erection of the tower, including the footings, foundation, and guy anchors.⁷ This installation charge—\$60,610—must be paid coincident with the downpayment. In addition to the equipment items and installation costs in the RCA proposal, an additional expenditure totaling \$31,367, which includes freight, installation of technical equipment, clearing land, hardware items, photographic equipment and supplies, prop materials and miscellaneous carpentry and maintenance tools, will be required before the station commences operation.

208. Tele-Views proposes to locate its transmitter on a tract of land containing 30 acres. Although the corporate applicant itself does not have an option to purchase the land, the tract is available to the applicant through one of its stockholders, Schroeder, who has an option to purchase the tract of land for a consideration of \$400 per acre, or a total consideration of \$12,000.⁸

209. In its application, Tele-Views budgeted the sum of \$25,000 for acquiring, remodeling, or constructing buildings. The transmitter building which will be constructed near the base of the tower will cost \$15,000. The studio location was specified for a site to be determined within the city limits of Moline. On February 12, 1958 (approximately 4 months prior to the time the instant applications were designated for hearing), Tele-Views entered into an option to lease a building for its studio at a monthly rental of \$1,500 during the first year of operation and for \$2,000 per month each year thereafter during the period of the lease. With regard to alterations and remodeling of the building, the lease contained the following provision:

(b) Any alteration or improvement may be done with the express consent of the First Party [the lessor] at the expense of the Second Party [the lessee]. However, it is expressly agreed that if both parties shall agree as to the nature and extent and the expense of alterations which shall be necessary for the operation of the Second Party's business, the First Party will pay for such alteration and improvements which shall be repaid by the Second Party plus interest at the rate of six percent (6%) per annum to be paid on a monthly basis, prorated over the term of the lease, with the first payment due and payable on the first day of the first month after the exercise of the option by the Second Party.

The building which Tele-Views proposes for its studios and offices is presently used as a restaurant and is a two-story structure with a basement. Remodeling is necessary to the extent that the present restaurant and bar facilities must be removed; installation of partitions to afford two studios, a master control room, administrative offices, staff offices, prop and storage rooms, film rooms, and maintenance shops; the acoustical treatment of the ceiling and walls of the studios and master control room; installation of electrical circuits to provide proper current for equipment, convenient outlets, and additional lighting fixtures; and installation of additional ducts for air conditioning.

⁷ This item is a part of the \$127,152 cost item for "Tower equipment and services."

⁸ The consulting radio engineer for Tele-Views stated that 11 or 12 acres would be necessary for the tower and required guys. The applicant, however, has not submitted evidence to show that it could purchase only a part of this land.

210. After an inspection of the building, a local contractor, Ward R. Larson, submitted an estimate of \$24,627, including the subcontracts for electrical and duct work. In the opinion of the architect, the construction and acoustical treatment reflects reasonable and sound construction practice and would provide effective soundproofing. The builder considered his estimate a firm bid and would perform the construction thereunder if Tele-Views' application is granted.⁹

211. To defray partially the cost of remodeling, Tele-Views will use the \$10,000 remaining in the account budgeted for buildings and remodeling. Tele-Views will request the owner of the property to pay the balance of the cost of remodeling under the terms of the lease as set forth above. The owner of the property will bear the expense of remodeling the building under the terms of the option if (1) Tele-Views is financially responsible to carry out his obligations under the contract at the time the request is made, and (2) provisions for a lease after the exercise of the option are satisfactorily resolved.¹⁰

212. The applicant's costs incurred in connection with the prosecution of its application for legal, engineering, and consultant's fees were approximately \$30,000 as of June 2, 1959. Although additional legal costs will be incurred, further engineering and consultants' costs will not be incurred until the time for construction of the proposed station, and would be payable, in the principal amount, after the commencement of operation. In addition to the costs for professional service, Tele-Views will have a preoperational expense of \$15,000, broken down as follows:

General manager.....	\$1,200
Secretary	240
Program direction.....	500
Chief engineer.....	13,332
Engineers	5,908
Power, light, heat.....	1,000
Rent on studio.....	3,000
Advertising	1,000
Telephone	200
Postage	200
Freight or express.....	270
Office supplies.....	150
Total.....	15,000

⁹ In response to cross-examination with respect to the proposed studio plans, a witness for Tele-Views (the television consultant) set forth contemplated plans for remodeling the building. He pointed out that no detailed plans and specifications had been made. He stated that, in order to divide the interior of the building into the studio, control room, storage rooms, and offices as set forth in the studio plans, the applicant contemplated the installation of cinder-block walls and half-paneling partitions constructed with lightweight metal. On the basis of the contemplated plans as set forth by the television consultant, two building contractors submitted as rebuttal evidence estimates of \$39,211 and \$43,860, exclusive of electrical and duct work which amounted to \$15,500 and \$6,000, respectively. In a subsequent consultation on estimated costs of remodeling, Larson advised Tele-Views to substitute frame walls with lath and plaster on both sides for the cinder-block partitions and the half-paneling partitions on the grounds that such construction would be more economical. The Larson estimate was made on the basis of the contemplated plans as set forth by television consultant on cross-examination, with exception of the substitution of the material for the walls and partitions.

¹⁰ The monthly rental and the term of years for the lease are set forth in the option.

213. On the basis of the foregoing costs, the total construction is estimated to be \$815,606, broken down as follows:

Equipment from RCA	\$128,355
Additional miscellaneous items	31,617
Installation charge by RCA	60,610
Land	12,000
Building and remodeling	25,000
Preoperational expense	15,000
Professional fees	45,024
Total	815,606

214. Under its plan to finance the construction and operation of the proposal, Tele-Views proposes to finance the proposal from subscription for additional capital stock in the amount of \$275,000, a bank loan in the sum of \$300,000, and deferred payment credit on equipment in the amount of \$626,335. Joe Sirote has subscribed to \$150,000 worth of the new stock. An unsecured loan in the amount of \$200,000 is available to Mr. Sirote for this purpose. Mr. Charles A. Carp had a net worth of \$219,000, as of April 24, 1958, and has available to him a bank loan in the amount of \$25,000 to provide liquid assets to meet his commitment of \$25,000. Under the stock subscription, Messrs. Schroeder, Filseth, and Mrs. Schroeder are committed to purchase, in the aggregate, \$50,000 of the new stock. They have a collective net worth of at least \$185,000 as of April 24, 1959. A bank loan in the amount of \$50,000 is available to them to enable them to have liquid assets to meet the commitment. Messrs. James B. Bowen and John A. Hobart have each subscribed to \$25,000 of the new stock. Mr. Bowen has a net worth of \$85,810 as of April 24, 1958, of which \$38,825 represents current liquid assets. Mr. Hobart has a net worth of \$59,500 as of April 24, 1958. A bank loan in the amount of \$25,000 is available to him which assures him current liquid assets to meet the commitment.

215. On the basis of the balance sheet and operating statements of Tele-Views as of February 11, 1959, the Exchange National Bank of Chicago has agreed to loan the applicant \$300,000 for the proposed construction. The loan will bear interest at the rate of 6 percent per annum and is payable in 48 equal monthly installments commencing 1 year from the date of the loan.

216. The equipment proposed by Tele-Views may be purchased with a downpayment of 25 percent, with the balance payable in 48 equal monthly installments at 5 percent per annum. After deducting the installation charge, the equipment for which deferred payment credit is available will cost \$626,355. The equipment will be shipped and installed in such a manner that the first monthly payment will not be due until the station commences operation.

217. During the first year of operation the following represents an estimated operating cost summary of the station:

Administration:		
Salary		\$33,000
Expenses		122,570
		<u>155,570</u>
Sales:		
Salary		46,320
Expenses		20,200
		<u>67,120</u>
Programming:		
Salary		92,700
Expenses		125,400
		<u>218,100</u>
Technical:		
Salary		106,840
Expenses		48,200
		<u>155,040</u>
Total		<u><u>536,930</u></u>

In addition to the above expenses, the monthly payments on the equipment will be \$10,802.

218. Tele-Views' television consultant stated that on the basis of his study of the market and past experience, the applicant could expect network revenue for the first month of operation in excess of \$20,000, and that local revenue would build up gradually so that by the end of the third month the total revenues should approximate \$40,000. The following revenues were estimated for the first year of operation:

Income:		
Network		\$300,000
National		250,000
Regional		110,000
Local		375,000
		<u>935,000</u>
Program sales: Film, sets, rehearsal, talent, news service, artwork		<u>300,000</u>
Total		<u><u>1,235,000</u></u>

Midland Broadcasting Co.

219. Midland Broadcasting Co., an Illinois corporation authorized to do business in Iowa, has an authorized capital of 50,000 shares of stock, \$5 per share par value, of which, as of November 12, 1958, 5,150 shares had been issued and 44,850 shares subscribed for by 12 stockholders. The officers, directors, and stockholders are as follows:

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Name	Office	Percentage of ownership	Shares of stock	
			Held	Subscribed
H. Leslie Atlass, Jr.	President, director	37	1,890	16,650
Lester R. Stone	Vice president, director	3	150	1,350
Joseph B. Oakleaf	Vice president, secretary, director	3	150	1,350
Adolph Estess	Treasurer, director	3	800	2,500
Joseph R. Rosborough	Assistant secretary, director	3	200	1,300
Paul C. Johnson	Assistant treasurer, director	3	150	1,350
Frank Atlass II	Director	15	750	6,750
Harriet Jane Atlass	do	15	750	6,750
C. Richard Evans	do	4	200	1,800
Manley R. Hoppe	do	3	150	1,350
John M. Barrows	do	3	150	1,350
John C. Lofack	do	3	150	1,350

Qualifications of Midland's officers, directors, and stockholders

220. *H. Leslie Atlass, Jr.*, president, a director, and 37-percent stockholder of Midland, was born on November 22, 1919, in Lincoln, Ill. In 1924 he moved to Chicago, and he has resided there since, with the exception of 1 year in California as a college student and the years he spent in military service. He was graduated from Lake Forest Academy in 1936 and from the University of Chicago in 1940. He served in the U.S. Army from 1941 to 1945, receiving the Legion of Merit while with the Office of Strategic Service, as well as six battle stars.

221. Mr. Atlass has been exposed to and connected with the broadcast industry virtually all of his life. His father, H. Leslie Atlass, and his uncle, Ralph L. Atlass, started radio station WBBM in Lincoln, Ill., in 1922, moving the station to Chicago in 1924 after having previously operated an amateur station, 9DFC, in Lincoln. In 1945, Mr. Atlass was employed by Columbia Broadcasting System in Chicago as head of its television department, later becoming a local salesman for WBBM (AM) in Chicago when activities in connection with the CBS television department were suspended. He was employed at WBBM (AM) until 1948.

222. In February 1948, Mr. Atlass was employed at radio station WIND in Chicago as program director, a position he held until the facility was sold to Westinghouse in December 1956. From September 1953 until December 1956, he was also treasurer, a director, and a stockholder of WIND, Inc.²¹ During the time that Mr. Atlass was program director of WIND, the station audience rose from fifth to first place in the Chicago area, and was, according to the Nielsen, Pulse, and Hooper surveys, continuing to increase its dominance of the market when Westinghouse assumed control. This increasing public acceptance of WIND's programming was, in Mr. Atlass' opinion, based, at least in part, upon the high degree of selectivity in clientele, the content and delivery of commercial messages, and a proper balance of service and entertainment in relation to commercial time. During the time Mr. Atlass was associated with WIND, awards were received

²¹ Mr. Atlass owned 990 shares of 9,000, and he was the voting trustee for 890 shares owned by his sister and 490 shares owned by his brother. Mr. Atlass presently owns 9,000 shares of stock in Westinghouse Electric (which is the parent company of Westinghouse Broadcasting) and 100 shares of ABC-Paramount. He holds no stock in any radio or television broadcast station.

for programing from the Chicago Council on Foreign Relations, Ohio State, and the Chicago Federated Advertising Club, among others.

223. In 1950, Mr. Atlass, along with his sister, Harriet Jane Atlass, and his brother, Frank Atlass II, formed a corporation known as Atlass Amusement Co., a purpose of which was to serve in advisory and consultive capacities to broadcast facilities. Each of the three owned one-third of the company.¹² In April 1950, Atlass Amusement Co. entered into a contractual arrangement, which was modified in June of 1950, with Monona Broadcasting Corp., the licensee of WKOW in Madison, Wis., whereby certain advisory and consultive services would be rendered by the former. A small amount of stock was later acquired.¹³

224. On August 1, 1950, the Commission directed a letter to Monona Broadcasting Corp., a copy thereof being sent to Atlass Amusement Co., requesting comments upon the degree of participation by Atlass Amusement Co. in the affairs of Monona. On November 7, 1951, WKOW was designated for hearing with respect to its application for renewal of license (docket 10085) upon the premise that an unpermitted transfer of control might have occurred.

225. The stock purchased by Atlass Amusement Co., or its nominees, in Monona Broadcasting Corp., supra, was resold to the corporation in November 1952, and the consultant's agreement between the two concerns was terminated that same month. The renewal application of WKOW was granted, without any determination having been made as to whether or not a transfer of control had occurred.

226. In 1949, Ralph Atlass formed a corporation known as AC Radio Co., Inc., in which H. Leslie Atlass, Jr., was secretary, a director, and 5-percent stockholder. This company performed consultive and advisory functions for WMCA of New York pursuant to a contractual agreement dated February 14, 1949.¹⁴ On August 1, 1950, the Commission requested comments from WMCA, Inc., with respect to the possibility that an illegal transfer of control had been consummated between that company and AC Radio. H. Leslie Atlass, Jr., testified that he had never seen nor was aware of the aforesaid letter from the Commission. He was connected with AC Radio from February 1949 through October 1950. In any event, no renewal of license for WMCA was withheld or denied by virtue of the said Commission request of WMCA, and Ralph Atlass remained a director of WMCA, Inc., from January 31, 1949, to on or about January 30, 1958.

227. H. Leslie Atlass, Jr., also was a director of a company known as AM Radio Sales from February 1952 to February 1957. He owned no stock therein. AM Radio Sales is a sales organization, representing various radio stations with respect to the sale of time and talent.

228. Mr. Atlass became associated, beginning in May 1957, along with his brother and sister, with the nine local stockholders presently

¹² Neither Frank Atlass II nor his sister, Harriet Jane Atlass, was active in Atlass Amusement Co. H. Leslie Atlass, Jr., was president, secretary, and a director of the company from 1950 to 1954, and from 1954 to date he has been president, treasurer, and a director.

¹³ Mr. Atlass owned 45 shares out of 2,700.

¹⁴ AC Radio had no stock interest in WMCA, Inc., or, in fact, any other broadcast ownership interest.

comprising a part of the applicant corporation, and he has, since June 1957, devoted his full time and attention to the affairs of Midland. Among his civic interests are the radio-TV section of the Community Fund in Chicago, the Chicago Civil Defense Corps from its inception in 1954 to date, and the Chicago Park District Police Benevolent Association.

229. Mr. Atlass has no present financial interest in any radio or television station, newspaper, or any other medium of mass communication, except small ownership interests in ABC-Paramount and Westinghouse Electric, noted *supra*. Should Midland be granted a construction permit, he plans to move immediately to the Quint City area, and to devote all of his time to the operation of channel 8. He is proposed as general manager of the station.

230. *Lester R. Stone* is vice president, a director, and 3-percent stockholder of Midland. He was born in Rock Island County, Ill., in 1909, attending Moline public schools until his graduation from high school in 1929. He attended the University of Illinois during 1930 and 1931, and Augustana College in Rock Island during 1932 and 1933. In 1935, Mr. Stone played professional football with the Chicago Bears. Since that date, he has been engaged in dairy and fruit farming in Rock Island County, and presently owns and operates a 310-acre farm (Illinievек) in Hampton Bluff.

231. Mr. Stone is quite active in civic, school, agricultural, and youth affairs. He is, illustratively, a member of the Moline Consistory; the Clementine chapter, OES, of Colona, Ill.; the After Dinner Club of Moline; the Blackhawk Hikers Association; and the Agriculture Committee of the Rock Island Chamber of Commerce.

232. Mr. Stone has appeared on several television shows, some of which were televised from his farm. For example, the Illinois Agricultural Association produced a half-hour film on Mr. Stone's dairy operation. He appeared on this program, and both he and his wife appeared on a program entitled "Farm Bureau," which was televised by WOC-TV in Davenport.

233. Mr. Stone has no business interests other than his farming operation, and he is not identified with nor financially interested in any broadcast facility or other medium of mass communication. He has read the NAB code and the "Public Service Responsibility of Broadcast Licensees," and he is continuing to familiarize himself with the television industry. He intends to be active in the actual operation of channel 8 should Midland acquire the construction permit, devoting a minimum of 20 to 30 hours weekly in his capacity as farm director and as a member of the board of directors.

234. *Joseph B. Oakleaf*, vice president, secretary, a director, and 3-percent stockholder of Midland, was born in Moline in August 1910. He attended the Moline public schools, graduating from Moline High School in 1928. Mr. Oakleaf received a bachelor of arts degree from Augustana College in Rock Island, and spent 2 years at Michigan Law School. After leaving law school, Mr. Oakleaf entered the insurance department of his father's law firm in Moline, and he managed that department until 1948 when it was merged with the Earl Tarbox Agency, a local insurance firm, to form a new firm called

Oakleaf Tarbox Agency, Inc. From 1948 to 1957, he was secretary and treasurer of that corporation, and he is now the president and sole stockholder. Mr. Oakleaf's business interests, in addition to his interest in the Oakleaf Tarbox Agency, Inc., include his directorship of Frank Foundries Corp. in Moline, which he has held since March 1958. In addition to owning a fractional stock interest in that corporation, he has been a voting trustee of 14 percent of the stock since April 1958. Mr. Oakleaf is secretary, treasurer, a director, and 3.27-percent stockholder in the Moline Building Corp., which owns and leases real estate. From 1952 to 1958, Mr. Oakleaf was secretary, treasurer, director, and 20-percent stockholder in Moline Assets Corp., which owned and leased real estate for industrial purposes.

235. Mr. Oakleaf has devoted much of his time to civic activities and charitable activities. Among his other activities, Mr. Oakleaf has been a member of the Moline Zoning Board of Appeals since 1943, and he has been its chairman since 1948.

236. Mr. Oakleaf is Midland's associate civic director, and he plans to devote a minimum of 25 hours per week to the station's affairs. Included in his responsibilities is the program "Our Towns," which he will arrange for and direct. He has no previous experience in the broadcast industry, and has no interest in any medium of mass communication, but he has read the NAB code and "The Public Service Responsibility of Broadcast Licensees."

237. *Adolph Estess* is treasurer, a director, and 8-percent stockholder of Midland. He was born in Russia in 1903, moving to Davenport when he was 6 months old. He is a naturalized American citizen.

238. From the time he was in grammar school, Mr. Estess worked at many different jobs. He sold newspapers on street corners, for example, and he started a retail cigar, candy, and soda business in Davenport when he was 15 years old. He also worked as a real estate salesman, and as an employee of a dress store chain, opening his own dress shop in Joliet, Ill. Mr. Estess acquired the New York Store in Moline, a department store, in 1947, and in 1957 he opened a new department store in Rock Island. He also owns a real estate firm in Rock Island called 124-18th St., Inc.

239. Mr. Estess has civic and fraternal interests, too many to mention here, and all highly creditable. He is a member of B'nai B'rith. Mr. Estess has no identification of any nature with the broadcast industry or with any other medium of mass communication. He has read the NAB code, the booklet entitled "The Public Service Responsibility of Broadcast Licensees," and other publications. It is his intention to devote a minimum of 25 hours per week to Midland's proposed station, principally in his capacity as news director and as a member of the board of directors.

240. *Joseph R. Rosborough* was born on January 13, 1911, in Moline, Ill., where he has resided all of his life. He is assistant secretary, a director, and a 3-percent stockholder of Midland. He attended the Moline public schools, being graduated from Moline High School in 1929. Mr. Rosborough received a bachelor of science degree in 1933 from the University of Illinois, and, in 1935, he re-

ceived a bachelor of laws degree from that school. Upon completing his legal education, Mr. Rosborough practiced law in Moline. From 1942 to 1945, he served on active duty in the U.S. Navy, retaining his Reserve commission as a lieutenant commander since his release from active duty. Following World War II, he returned to Moline to resume the practice of law, and he has continued to practice in that area since then. In addition to his legal practice, Mr. Rosborough is secretary and a stockholder of the Moline Tool Co., the sole owner of Cherry Hill Addition, a subdivision development, and a one-third owner in Seven Hills First and Second Additions, another subdivision development. He also has other miscellaneous real estate interests.

241. Indicative of his interest in community affairs, Mr. Rosborough has served on the board of directors of Bethany Home, a child welfare agency for the Moline area, for 20 years. He has been a member of the Moline Rotary Club for a like period, and he currently is a director thereof. He has also served as a director and president of the Moline Community Chest, and he was its general drive chairman in 1954. His other similar activities are extensive.

242. Mr. Rosborough is Midland's proposed discussion director, and he expects to devote a minimum of 25 to 30 hours each week to station affairs. He has no interest in or connection with any radio or television station, newspaper, or other medium of mass communication. While he has had no practical experience in television, he has read the "Blue Book," the NAB code, and other articles and periodicals dealing with the television industry.

243. *Paul C. Johnson*, assistant treasurer, a director, and 3-percent stockholder of Midland, was born near Fulton, Ill., on November 14, 1907. He moved to Rock Island in 1918, and was graduated from Rock Island High School in 1925. He has lived in Moline since 1937. After graduation from high school, Mr. Johnson worked as a time-keeper until 1928, when he became a salesman. From 1928 to 1944, he worked as a salesman for various companies in the Moline area. In 1944, he founded his own insurance and real estate business in Moline, in which he is currently active. Mr. Johnson has no other business interests.

244. Mr. Johnson has been a member of several lodges and fraternal organizations. He was a director of New Industries, Inc., in 1956 and 1957, and served as president from 1954 to 1955 of the Illinois Municipal League. Mr. Johnson was a Moline alderman from May to September of 1951, and he served as mayor of that city from 1951 to 1957.

245. Mr. Johnson is Midland's proposed civic director, and he expects to devote at least 24 hours per week to the affairs of the station. He has no previous experience in the broadcasting industry, except for various appearances on radio and television programs, and he is not connected with any broadcast station, newspaper, or other medium of mass communication. He has read the NAB code and the booklet entitled "The Public Service Responsibility of Broadcast Licensees."

246. *Frank Atlas II*, a director and 15-percent stockholder of Midland, was born on November 5, 1930, in Chicago, Ill., and he presently resides in that city. He was graduated from the Wheaton Com-

munity High School in 1948, and attended the University of Arizona for 1 year. In 1949, Mr. Atlass was employed by the Chicago Daily News as a classified space salesman, working in that capacity until March of 1950 when he joined the Columbia Broadcasting System. He has worked in various departments and divisions of CBS in Chicago, including sales promotion and as an account executive in connection with local sales at WBBM and WBBM-TV. He has also acted as producer, writer-producer, and executive producer, as well as program manager at WBBM-TV. Presently, Mr. Atlass is sales manager of WBBM-TV. Mr. Atlass produced, and in certain cases wrote and produced, a weekly half-hour television presentation on the CBS network entitled, "Susan's Show." In his capacity as program manager at WBBM-TV in Chicago, he was responsible also for the daily programing schedule and all programing and production personnel. In this connection, he supervised all local shows with respect to preparation and presentation. During the past 2 years, while Mr. Atlass has been executive producer and program manager at WBBM-TV, both Mr. Atlass personally and the WBBM program department have received various awards for outstanding performances in television programing and production.

247. Mr. Atlass has been a member of the B'nai B'rith since 1953, and he has served since 1954 as a member and patron of the Juvenile Protective Association of Chicago, an organization devoted to the welfare of mistreated or neglected children. He has also been actively interested in organizations promoting the television, radio, film, and recording industries in Chicago. To that end, he has been actively associated with Chicago Unlimited, an organization devoted to the stimulation of business in these industries. He has been a director since 1956, vice president in 1947, and chairman of the executive committee in 1958.

248. Mr. Atlass was one of the founders of the Chicago chapter of the Academy of Television Arts & Sciences, an organization designed to advance the arts and sciences of television in fostering creative leadership in the television industry throughout the United States. In 1958, he was cofounder, first vice president, chairman of the executive committee, and a member of the board of governors. As a member of the U.S. Naval Reserve since 1950, Mr. Atlass traveled to Europe in 1957 to produce and direct a documentary recruiting film for the Navy. The film, entitled "Mediterranean Patrol," was made in cooperation with the Sixth Fleet, and Mr. Atlass received a letter of commendation for this film from the Under Secretary of Navy. Mr. Atlass has been a member of the Navy League since 1958.

249. In 1953 Mr. Atlass acquired 890 shares out of 9,000 shares of stock in radio station WIND in Chicago, and he relinquished these shares in 1956. From 1950 to 1952 he owned 45 shares out of 2,700 shares of stock in radio station WKOW in Madison, Wis. He is vice president, a director, and one-third stockholder in Atlass Amusement Co., Inc., a radio and television consultation and production firm, and he owns approximately \$4,000 worth of stock in Sonora Electronics, Inc., a television set and organ manufacturing company. Mr. Atlass also owns a small stock interest in Westinghouse Electric.

250. Mr. Atlask is proposed as Midland's program manager. In the event Midland is the successful applicant, he plans to move to Moline, and to devote his full time and effort to fulfilling his duties in that capacity.

251. *Harriet Jane Atlask* was born September 26, 1933, in Chicago. She is a director and 15 percent stockholder of the applicant. After attending public schools in Wheaton, Ill., Miss Atlask attended Rollins College in Florida, receiving a bachelor of arts degree from that institution in 1955. After graduation from college, Miss Atlask traveled in Europe for 3 months, and, upon her return, she was employed by CBS in Chicago. She is presently public affairs director of WBBM and WBBM-TV.

252. Miss Atlask began her employment with CBS as a production assistant in the program department, serving as an assistant to the producer of various productions in such capacities as rehearsal timings, script preparations, programing arrangement, music clearances, the ordering of properties and scenery, and other activities. Miss Atlask later became the producer of the programs entitled "Shopping With Miss Lee," a daily 15-minute women's service show; "Luncheon With Billy," a 15-minute daytime musical program; and a nighttime diskjockey show entitled "The Howard Miller Show," which was later changed to a variety program format.

253. Since 1956 or early 1957, Miss Atlask has devoted full time, creatively, to the public affairs field, dealing with only the highest class personalities and institutions, in religious, educational, and scientific fields. In the summer of 1956, Chicago was stricken with a polio epidemic. A portion of Miss Atlask's program "Shopping With Miss Lee" was devoted to the promotion of inoculations, the staff traveling with mobile units and working closely with the board of health. For this service, McCall's Magazine awarded Miss Atlask an award for outstanding service in that year. In 1957, Miss Phillip, talent, and Miss Atlask received a similar award for a series of programs entitled "The Unwed Mother, the Unwanted Child."

254. Miss Atlask has also produced various special interest shows from time to time. Illustratively, upon the death of Samuel Cardinal Stritch, the Catholic leader of the Chicago Archdiocese, a special program entitled "Tribute to the Late Samuel Cardinal Stritch" was broadcast within 2 hours of his death. As the producer of this program, Miss Atlask received a "Distinguished Achievement Award for Television News Reports" from the Radio-Television News Director's Association and the Medill School of Journalism, Northwestern University. As a result, at least in part, of the efforts of Miss Atlask, WBBM and WBBM-TV have received a number of outstanding awards.

255. Among the civic interests of Miss Atlask are her memberships in the Chicago Foundlings Home and the Chicago Heart Association. She is also a member of the American Academy of Television Arts & Sciences, a member of Fashion Group, a member of the Evaluation Committee of the Chicago Rabbinical Association Television Commission, and a member of American Women in Radio & Television.

256. In 1953, Miss Atlass acquired 890 shares of WIND stock, which she relinquished in 1956. From 1950 to 1952, she owned 45 shares of WKOW stock. She is a director and one-third stockholder of Atlass Amusement Co., Inc.

257. Miss Atlass presently has no financial interest in any radio or television station, newspaper, or other medium of mass communication, except for a small stockownership interest in Westinghouse Electric. She plans to be Midland's public affairs director, and she will move to Moline and devote her full time to her duties in this connection should the application of this applicant be granted. She presently resides in Chicago, Ill.

258. *C. Richard Evans*, a director and 4 percent stockholder of Midland, was born on August 3, 1902, in Moline, Ill. He attended Moline public schools, and studied engineering for several years at Illinois Wesleyan University, transferring to the law college from which he was graduated.

259. In July 1926, Mr. Evans was employed by the International Harvester Co. He took a 2-year executive training course, and, at its conclusion, became the employment manager for that company's Farmall Tractor Works in Rock Island. Later, when his company built a new plant in East Moline, Mr. Evans was placed in charge of industrial relations there. In 1937, he was assigned to International Harvester's newly constructed plant at Indianapolis as its manager of industrial relations. In 1940, International Harvester loaned Mr. Evans' services to the U.S. Department of Labor on a dollar-a-year Presidential appointment basis as Director of Training Within Industry for District 14. In that same year, Mr. Evans was elected president of the Indianapolis Personnel Association. In 1941, Mr. Evans accepted a position with the George Evans Corp. in Moline, becoming a director and vice president. During the first 9 months after joining that company, he received another Presidential appointment on a dollar-a-year basis as a Panel Consultant for Training Within Industry under the Illinois district director, and he served in that capacity until June of 1942. In 1955, he became president and general manager of the George Evans Corp., and he is currently acting in those capacities. He presently owns approximately 11 percent of the stock of that company. He has no other business interests. Mr. Evans is quite active in civic, charitable, commercial, and fraternal affairs.

260. Mr. Evans is Midland's proposed religious director, and he plans to devote a minimum of 20 to 25 hours each week to Midland's affairs. He has no interest in any radio or television station, newspaper, or other medium of mass communication. He has read the NAB code and the publication entitled "Public Service Responsibility of Broadcast Licensees."

261. *Manley R. Hoppe* was born in Groton, S. Dak., on November 28, 1910. He is a director and 3 percent stockholder of Midland. He attended public schools in Groton and Aberdeen, S. Dak., and was graduated from North High School in Des Moines, Iowa, in 1928. In 1932, he received a bachelor of science degree in chemical engineer-

ing from Iowa State College, and he joined its faculty for the school year 1932-33.

262. Mr. Hoppe was employed in 1933 by the Burgess Battery Co. of Freeport, Ill., as chief analytical chemist, and, later, as a chemical engineer. He returned to Iowa State College in 1934, serving 2 years as an instructor in the department of chemical engineering, and received a master of science degree in 1935. The following year, he obtained additional academic credits toward a doctorate.

263. In 1936, Mr. Hoppe was employed by Parr Instrument Co., Moline, as chief chemist, becoming vice president of that firm in 1942. In 1942, he accepted a commission as a captain in the U.S. Army, serving in the Armed Forces until his release from active duty in 1946. He returned to the Parr Instrument Co. in 1946, and was reelected to his former position as vice president. In 1957, he was elected the company's president, a position which he currently holds. Mr. Hoppe is a registered professional engineer in the State of Illinois. He owns 5.1 percent of Parr Instrument Co. stock, but he has no other business interests. He has resided in Moline since 1936, except for his military service.

264. Mr. Hoppe has been prominent in Rotary Club affairs in Moline, and in professional matters generally. In addition, he has taken part in various community projects. He is a member of the Congregational Church.

265. Mr. Hoppe is proposed as Midland's associate educational director, as well as the producer and master of ceremonies for a 15-minute, Monday-through-Friday program, entitled "Science Time." He will spend a minimum of 26 hours per week at these, as well as other Midland activities. He has no other broadcast interests, and he is not connected with any medium of mass communication. In an effort to become acquainted with the responsibilities and duties of a television licensee, he has read the NAB code and "Public Service Responsibility of Broadcast Licensees."

266. *John M. Burrows*, a director and 3 percent stockholder of Midland, was born on October 18, 1912, at Davenport, Iowa. He attended Davenport public schools through the elementary grades, and in 1931 he was graduated from Mercersburg Academy, Mercersburg, Pa. In 1935, he received a bachelor of arts degree from Amherst College in Amherst, Mass.

267. Mr. Burrows was employed by the Ralston Purina Co. in 1935, and he has remained with that company continuously except for a period of military service. Since 1945, he has been manager of the Davenport plant. He entered the Navy in 1943, and served on active duty until 1945. Mr. Burrows currently resides in Davenport. In addition to his position with the Ralston Purina Co., Mr. Burrows has been a director of the First Federal Savings & Loan Association in Davenport since 1957, and its assistant treasurer since 1958. He is a director and stockholder since 1958 of a real estate development company, 4000 Brady Street Corp. Mr. Burrows is quite active in many civic and charitable affairs. Mr. Burrows has been the official representative of his company to the Associated Industries of the Quad Cities since 1949, was a director of that organization

from 1956 to 1958, its vice president from 1957 to 1958, and is currently its president.

268. Mr. Burrows is Midland's proposed educational director, and he intends to spend at least 20 to 25 hours per week on affairs of the station. He is not associated with other broadcast interests, newspapers, or other media of mass communication. He has read the NAB code, the publication entitled "Public Service Responsibility of Broadcast Licensees," and other documents which concern the television industry.

269. *John C. Lujack*, a director and 3-percent stockholder of Midland, was born in Connellsville, Pa., on January 4, 1925. He was graduated from public high school in that city in 1942. During his last year in high school, Mr. Lujack was president of the senior class and class speaker, as well as captain of the basketball and football teams. He won nine letters in high school, and was a member of the National Honor Society, a scholastic honor organization, for 2 years.

270. In 1942, Mr. Lujack entered the University of Notre Dame. He received honorable mention for All-American honors in football the following year. In 1943, he served as an apprentice seaman in the V-12 Navy program, and in 1944 and 1945 he served on active duty in the Navy, being discharged with the rank of ensign in 1946. He returned to Notre Dame in 1946, and during 1946 and 1947 he received many football awards. In the latter year, he was a unanimous choice on every All-American football team.

271. After graduation from Notre Dame in 1948, Mr. Lujack played professional football with the Chicago Bears until 1951, again receiving several football awards. In 1949, he was, for 13 weeks, the summer replacement for the radio show "Jack Armstrong, the All-American Boy." He broadcast three ½ hour shows per week entitled "The Adventures of Johnny Lujack" over the Mutual Broadcasting System, station WGN, in Chicago. Throughout his college and professional football years, Mr. Lujack was called upon frequently to speak at various civic affairs, and he appeared on many occasions on both radio and television. During the "off-season" while with the Chicago Bears, he worked as a salesman in Chicago for the Equitable Life Assurance Society of the United States.

272. In 1952 and 1953, Mr. Lujack was backfield football coach at Notre Dame, and in 1953 he also appeared for 13 weeks as a panel member of a radio sports show called "Ask Me Another." In 1954, he entered the automobile business in Davenport, but he continued his television experience by such activities as an 8-week sports program called "Football Roundup" for CBS in New York in 1956. He also assisted in televising the Gator Bowl football game in Jacksonville, Fla., in 1956. In 1957, he assisted in televising the Green Bay Packers' home and away football games for the CBS regional network, and on New Year's Day in 1958, he assisted in televising the Orange Bowl football game from Miami, Fla., over the CBS network. During the 1958-59 football season, he acted as host for a CBS network production entitled "Pro Football Kickoff." Mr. Lujack presently is a 30-percent owner of Lujack-Schierbrock Chev-

rolet Co. in Danvenport, and a 50-percent owner of Lease-a-Car Co. in that city. He has no other business interests.

273. Mr. Lujack has been active in a number of religious, charitable, and civic matters in Davenport.

274. Mr. Lujack is proposed as Midland's sports director. He will devote a minimum of 25 hours a week to the station's affairs in that capacity and in his capacity as a sports commentator. Mr. Lujack has no other interest in any broadcast facility, newspaper, or other medium of mass communication.

Staff, studios, and equipment

275. Midland proposes a staff of 106 employees, not including "talent," divided as follows:

Administrative	9
Sales	9
Programing	39
Production	16
Engineering	33

The following individuals have already been selected as members of Midland's staff:

President and general manager	H. Lealie Atlass, Jr.
Chief engineer	Carroll K. Neltner.
Program director	Frank Atlass II.
Public affairs director	Harriet Jane Atlass.
News director	Adolph Estess.
Sports director	John C. Lujack.
Farm director	Lester R. Stone.
Educational director	John M. Burrows.
Associate educational director	Manley R. Hoppe.
Religious director	C. Richard Evans.
Discussion director	Joseph R. Rosborough.
Civic director	Paul C. Johnson.
Associate civic director	Joseph B. Oakleaf.
Women's director	Donna Mease.
Publicity and promotion director	Richard T. Balzer.

Eleven of the selected staff members are local residents of the Quint Cities, and the remainder plan to move to Moline if Midland is the successful applicant.

276. The proposed chief engineer, Carroll K. Neltner, is presently serving as the engineer-in-charge of technical operations of WBBM-TV, Chicago, and he has a 15-year record of technical experience. Richard P. Balzer, the proposed publicity and promotion director, has been employed in various positions at WHBF and WHBF-TV in Rock Island for 7 years. Miss Donna Mease, Midland's proposed women's director, is a graduate of Drake University in drama and speech education. She is an experienced continuity writer, and she has participated in the televising of women's programs. The remaining selected staff members are all stockholders.

277. Midland has analyzed its personnel requirements with respect to the number of individuals assigned to each phase of its proposed operation, and it has devised specific schedules for individual programming and production personnel. Announcers, directors, floormen, technicians, and carpenters are all assigned on a 5-day, 40-hour week basis. Each of them is given 2 consecutive days off, and the workday

is arranged to call for 8 out of a total of 9 hours, with a minimum of 12 hours between the end of 1 day's work schedule and the beginning of the succeeding day. Masters of ceremony and producers are given program assignment schedules.

278. In addition to the job assignments already specifically scheduled by Midland, the testimony reflects an intention to schedule the office personnel on a 40-hour week basis. Supervisory personnel, such as the general manager and program director, will be on call at all times. The photographers will also be on call for news stories, although their regular schedule will be a 40-hour week overlapping to the extent necessary to cover the entire week. Similarly, the sales manager and the salesmen will be operating essentially on a 40-hour week. Deliberately not so scheduled are staff members assigned as "producer and/or MC"; Midland believes that the time required to produce a given program should best be left to the discretion of the assigned producer rather than be restricted to an hourly schedule, although it is anticipated that the required duties for each could be accomplished within a 40-hour week.

279. Midland has also scheduled all technical personnel for the first year of proposed operation, the assignments being keyed to the first year's proposed weekly program schedule. In addition to specifically planning and setting forth the working hours in tabular form of each technical individual throughout a 7-day period, Midland has scheduled each technician by types of work, studio location, rehearsal and air time, and by program throughout each day. Job descriptions for both key nontechnical and technical personnel have also been set forth by Midland.

280. For its main studio, Midland proposes to erect a two-story building on the main business street of Moline, Fifth Avenue. It possesses options for a frontage of approximately 100 feet at that location, the land extending some 150 feet in depth. The building will be 65 feet by about 140 feet, and adjacent to the structure a 190-foot self-supporting tower will be erected, which will support microwave equipment for STL, connections with the Davenport studio, and remote telecasts. A parking area, which will be surfaced with asphalt, will also be provided.

281. Bus service is supplied by the Rock Island-Moline City Lines, Inc., buses passing in front of the proposed main studio on a frequent basis. In addition, the airport bus stops one and one-half blocks from the proposed studio location, and the Greyhound Bus Line maintains a terminal two blocks away.

282. Midland intends to have two studios in its main studio building; two control booths; an announcer booth; a makeup room; a technical shop; a music library; a mail and Mimeograph room; a reception area and lounge; storage and janitorial space; secretarial accommodations; a newsroom; a sales, promotion, and publicity room; a telecine room; and a darkroom, as well as various offices for its managing personnel. The applicant has also supplied blueprints and building specifications relating to the proposed construction of its main studio building, which cover such items as structure, walls, windows,

finish, heating, air conditioning, plumbing, electricity, telephone, design conditions, and miscellaneous items.

283. The applicant also plans to erect a one-story building on Switz Street in Davenport to house an auxiliary studio and control room with a reception area and facilities for two salesmen, plus a utility room. The structure will be some 45 feet wide and about 63½ feet in depth. As with the main studio building, Midland has supplied building specifications and blueprints. The location is one-half block from River Drive, a major street in both Bettendorf and Davenport.

284. In addition to the auxiliary studio building, Midland proposes to construct a storage building and garage at the rear of and connected to the auxiliary studio, the building to be about 22 feet wide and 30 feet deep. Blueprints have been prepared for this building. A 40-foot tower is also planned for the optioned land upon which the auxiliary studio and storage buildings will be erected, the tower to receive and transmit microwave signals with respect to the main studio location in Moline and possible remote pickup points. A parking area approximately 23 feet by 35 feet is also planned for this location.

285. The auxiliary studio building is less than 1 mile from downtown Davenport and approximately 2 miles from Bettendorf. It is about 4 miles from the main studio site. Public transportation facilities are available at frequent intervals within one-half block of the proposed buildings.

286. Midland has secured an option on some 40.9 acres of land bordering U.S. Highway 150 upon which it plans to construct a transmitter building and a tower to support its antenna. The site is 16.9 miles from the main studio location, 20.9 miles from the auxiliary studio location, and 13.3 miles from the Quint City airport. The land is presently part of a farm.

287. The transmitter building will be about 44½ feet by 35 feet, and it will house the transmitter proper, the technical shop, the utility room, and a washroom. The ceiling height is planned to be 9½ feet. Midland has supplied scaled drawings of the floorspace available in all three of its studios, and sketched in the placement of the sets necessary for the production of its local programs. Midland also submitted charts or diagrams which indicate the proposed locations of various office furnishings and operating equipment in both main control rooms, the auxiliary control room, and the transmitter building on a floor plan basis.

288. The applicant's first year technical proposal consists of six separate lists, covering facilities required by the technical operations department, the art department, the carpenter shop, the production department, the film department, and the news department. The RCA broadcast equipment proposal lists the technical equipment used in the various technical areas of Midland's proposed station, including all of the transmitter and main antenna system equipment. Midland has modified some of the manufacturer's package arrangements to suit the particular technical demands of its custom-designed installation. Midland has gone to considerable lengths in detailing items of equipment believed to be necessary in its proposed operation. Midland has also illustratively itemized its nontechnical equipment needs,

and it has indicated how such equipment will be related to the areas in which it is to be used.

289. Midland produced exhaustive evidence of its proposed technical equipment, going into all phases of television production, color, monochrome, photographic, etc. There can be no doubt, from the facts, and it is so found, that Midland can effectuate its planned programming from a technical standpoint. The same is found with respect to staffing and studios.

Proposed programming

290. The record indicates that Midland proposes to adhere to the precepts of the NAB code, and to impose upon itself additional operational standards which it believes will best provide for the public interest, convenience, and necessity of the population to be served by its station. It plans to review each script or recorded material in advance of telecasting, and to provide monitoring personnel during all broadcast periods to prevent the presentation or continuation of improper material.

291. Midland intends to become a community institution and to participate in the area's public-service activities, devoting some 35.8 percent of its total broadcast time to public-service programs and special features. Its presentations are tailored to meet particular community needs. Its concept of the basic responsibility of a potential licensee of a broadcast facility is that it should provide a needed service, and, to that end, upon the basis of a survey conducted, its programming will satisfy requirements of the viewing public.

292. The applicant also intends to supplement its regularly scheduled telecasts with special presentations relating to the holidays celebrated in the Quint City area. Midland also will provide coverage for recognized charitable endeavors and local promotion campaigns, such as those organized on behalf of Arrowhead Ranch, the Community Chest, and the United Fund. It proposes to take an active part in safety drives and efforts to beautify the local area, as well as paying particular attention to those activities devoted to the assistance of the area's youth. Attention has also been paid to adult education.

293. Midland conducted a survey of potential film sources, contacts having been made with suppliers of film in the fields of religion, education, Government, industry, agriculture, and entertainment. Its film proposals include both syndicated films and feature pictures, and they compose slightly more than one-third of the proposed program schedule.

294. The applicant plans to originate some of its major live programming efforts in the fields of religion, education, talks, agriculture, and discussion from its auxiliary studio in Davenport. Midland has placed into evidence four lists of remote program possibilities in its coverage area, one each for Moline, Rock Island, Davenport, and Bettendorf, and what it terms the "outside area." It has indicated the areas within which it considered microwave relays to be necessary in view of the terrain characteristics. Midland's programming proposal indicates a single 30-minute remote program per week, to be

telecast on Sundays, but this is the result of illustrating a typical week. It proposes to televise other remote events as they occur, not limiting itself to the single remote program set forth.

295. As a basis for its views and attitude toward educational cooperation and educational programing, Midland stockholders contacted on a personal basis about 100 educational leaders in its area, and its educational director communicated with the Joint Council on Educational Television, the National Education Association of the United States, the Chicago Educational Television Association, and the Iowa Joint Committee on Educational Television. Midland has also formulated five advisory groups composed of local leaders in the fields of religion, education, agriculture, and civic activities. It presently has a 7-member religious program council, a 7-member educational program council, a 7-member agricultural program council, and a 7-member discussion program council, the 28 members representing various localities within the proposed service area. The chairmen of the four councils comprise the program advisory board.

296. The program advisory board maintains consultive and advisory liaison with the president and general manager, the program director, the executive director, and the public affairs director. The religious program council consults with and advises the religious director and his assistant; the educational program council consults with and advises the educational director and his associate; the agricultural program council consults with and advises the farm director and his assistant; and the discussion program council consults with and advises the discussion director. Each council is responsible to the program advisory board.

297. Midland has also arranged for what it terms a "suggestion box." Through the use of visual slides and audio announcements, it plans to request from the viewing audience constructive criticism and suggestions relating to the improvement of its service. Suggestions thus received will be given to the various programing councils for consideration. Midland plans to award prizes periodically for the best suggestions received, and, where appropriate, to introduce winners on telecasts.

298. An analysis of Midland's program schedule is as follows:

	Commercial	Sustaining	Total
	Percent	Percent	Percent
Entertainment.....	80.0	8.3	88.3
Religious.....	.9	5.2	6.1
Agricultural.....	.1	5.7	5.8
Educational.....	.4	6.8	7.2
News.....	6.8	.5	7.3
Discussion.....	.4	6.7	7.1
Talks.....	4.7	2.6	7.3
Total.....	94.2	35.8	130.0

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	Percent	Percent	Percent	Percent
Network commercial (NC).....	18.7	64.3		30.6
Network sustaining (NS).....	.7	1.4		.9
Recorded commercial (RC).....	28.7	4.3	55.9	34.1
Recorded sustaining (RS).....	12.8	.7	26.3	19.8
Wire commercial (WC).....				
Wire sustaining (WS).....				
Live commercial (LC).....	8.3	12.6	7.3	9.5
Live sustaining (LS).....	30.8	16.7	9.5	24.4
Total commercial.....	55.7	81.2	64.2	64.2
Total sustaining.....	44.3	18.8	35.8	35.8
Complete total.....	100.0	100.0	100.0	100.0
Proposed broadcast-hours (per week).....	69:35	35:00	11:25	116:00
Number of spot announcements (SA) (per week).....	270	134	34	438
Number of non-commercial spot announcements (NCBA) (per week).....	186	54	22	262

299. Midland's typical week program schedule contains 59.2 percent of programs classified as "Entertainment," almost 6 of every 10 hours on the air. It does not, however, contain any local live entertainment presentations, this situation being expressly predicated upon the applicant's belief that the variety of network entertainment programs as such is initially sufficient to satisfy local requirements. Midland intends to concentrate a major share of its production effort on the remaining program types. The applicant does propose to incorporate entertainment features into several of its other program types, utilizing from time to time entertainment talent and formats. Midland has indicated that it will use, where appropriate, music groups, art shows, theatrical presentations, and other civic affairs involving entertainment. Midland has prepared for each of its local live programs a typical telecast, indicating assigned personnel, rehearsal and air time, and presentation formats. Summaries of its local live program proposals are as follows:

(a) *Religious Programs:*

(1) *Opening Prayer*, 7:55 to 8 a.m., Monday through Saturday; 8:25 to 8:30 a.m., Sunday. The station's broadcast day is commenced by this 5-minute period of prayer and meditation. Religious leaders of the various faiths will be featured on a rotating basis.

(2) *Morning Devotion*, 8:45 to 9 a.m., Monday through Friday. This program is intended to present a thoughtful message of inspiration, hope, and religious devotion.

(3) *Church Calendar*, 8:50 to 9 a.m., Saturday. This program is designed to inform viewers of the weekend's scheduled religious activities. It will include announcements of sermons, guest speakers, and unusual events connected with church services. Occasionally, films or still pictures will be utilized.

(4) *Our House of Worship*, 9 to 9:30 a.m., Sunday. This is an adult religious program which highlights ceremonies, concepts, and activities of the various local religious organizations. The program will be produced by Midland's religious director, O. Richard Evans, a stockholder.

(5) *TV Sunday School*, 11:30 to 12 noon, Sunday. This program is designed to acquaint youngsters with the meaning and beauty of religion and the significance of the important precepts of all religions. It is also produced by Midland's religious director.

(6) *Benediction*, 12:40 to 12:45 a.m., Monday through Friday; 12 to 12:05 a.m., Saturday and Sunday. The final 5 minutes of each broadcast day will be devoted to the deliverance of a benediction by a religious leader selected upon a rotating basis.

(b) *Agricultural Programs:*

(1) *Today's Farm Picture*, 6:05 to 6:15 p.m., Monday through Friday; 6:10 to 6:15 p.m., Saturday. This program is composed of a final report of farm news, market activity, market trends, and the weather.

(2) *Farm Markets and Weather*, 8:05 to 8:15 a.m., Monday through Saturday. This is a daily report of information believed to be of significance to farmers at the beginning of their working day.

(3) *RFD #8*, 12 to 12:45 p.m., Monday through Friday. This program is considered by the applicant to be its mainstay weekday service to agricultural interests. It reports current farming information, including market and weather reports, pertinent agricultural news, and investigations of current subjects of particular interest to the farming population. An exchange of programs with farm directors from other area stations is contemplated. The program is divided into three segments: "Markets and Weather," "Today's Farm Story," and "Farm News."

(4) *Youth on the Farm*, 10 to 10:30 a.m., Saturday. Concerned with the farm youth of the area, this program features their activities and achievements. Exhibits and demonstrations of their projects are planned, and it is expected that farm youth will take an active part in the planning, preparation, and presentation of the material.

(5) *The Blackhawk Farmer*, 5:30 to 6 p.m., Sunday. This program explores and reports in detail the various agricultural subjects felt to be of current importance to area farmers. The subject matter is geared to the seasons when the topics discussed are of immediate concern in actual farm processes. The program format is sufficiently flexible to permit all types of presentations, ranging from a discussion group composed of prominent farm leaders to demonstrations of agricultural machinery and new processes or methods. It will be produced and MC'd by Midland's farm director.

(6) *Farm News & Weather*, 10:15 to 10:20 p.m., Sunday. This is a summary of the week's significant market information, and a report of local weather conditions. It will also include a special farm news feature story.

(c) *Educational Programs:*

(1) *Beginner's Journey*, 1:30 to 2 p.m., Monday through Friday. This is a program designed for preschool youngsters and those attending school through the third grade. Many of the planned activities are similar to those children of this age group normally do at home, and participation by these children is anticipated. Some of the activities will be drawing, clay modeling, identification of pictures or models, operation of devices, and the acting out of safety dramas, all of which will be presented with a view to the establishment of acceptable habit patterns. This program will be produced by Midland's public affairs director, Harriet Atlas, a stockholder, and it will be conducted by Midland's women's director, Donna Mease.

(2) *Science Time*, 4:30 to 4:45 p.m., Monday through Friday. This is a presentation of simple, easily understood demonstrations of the processes of nature, and the resultant effects upon day-to-day living. While the programs will be directed primarily to young people, an attempt will be made to hold the interest of adults. It is produced and MC'd by Midland's associate educational director, Manley Hoppe, a stockholder.

(3) *World of Learning*, 9:30 to 10 p.m., Monday, Tuesday, Thursday, and Friday. The purpose of this program is the presentation of specific educational topics on an adult level. The program will be produced by area institutions of higher learning, and much of the talent found there will be utilized.

(4) *College Workshop*, 10 to 10:30 a.m., Sunday. This program is a television college seminar designed to illustrate the effect that higher education has in the world of practical affairs. A comparison of practical concepts and methods with their theoretically ideal counterparts is planned. Out-

standing persons in various fields will be utilized. It will be produced and MC'd by Midland's educational director, John Burrows, a stockholder.

(5) *Our Schools*, 4 to 4:30 p.m., Saturday. The program will present a view of the local school systems, not only with respect to an explanation of teaching methods employed but with demonstrations thereof. Both teachers and members of boards of education will participate. This program will also be produced and MC'd by Midland's educational director.

(6) *Homemaker's Seminar*, 9:20 to 9:30 a.m., Monday through Friday. This program is concerned with basic homemaking skills, and it is designed to be of interest primarily to women. The format includes information, instruction, and suggestions on topics most interesting to the area's homemakers. The program will be produced and MC'd by Midland's women's director.

(d) News Programs:

(1) *News*, 8 to 8:05 a.m., Monday through Saturday. This early-morning program will be a capsule roundup of the most important news stories of the preceding day, with particular emphasis upon news which occurred during the night. When available, films and news pictures will be shown.

(2) *Weekly Round-up—News & Weather*, 12:30 to 12:45 p.m., Saturday. This is a report of the latest news, and a review of the week's major stories, as well as a complete weather report utilizing the weekend forecast.

(3) *News*, 10 to 10:15 p.m., Monday through Sunday. This late evening's news telecast will be Midland's major news-reporting service of the day, reflecting the availability of family audience composition. News concerning the most important international, national, and local events will be presented. Midland's news director, Mr. Estess, a stockholder, will supervise the production of the program Monday through Friday.

(e) Discussion Programs:

(1) *Our Towns*, 4:45 to 5 p.m., Monday through Friday. This program will present topics associated with local business and recreational opportunities, its purpose being to acquaint the area's youth with community activities. The program will be produced by Midland's associate civic director, Joseph Oakleaf, a stockholder.

(2) *Channel 8 Press Conference*, 2 to 2:30 p.m., Saturday. This program is designed to acquire and to develop an interesting news story on camera. A panel of local newsmen will interview guests who are selected principally for their connection with or views on local issues. This program is produced and moderated by Midland's discussion director, Joseph Rosborough, a stockholder.

(3) *Let's Talk About It*, 10:30 to 11 p.m., Monday through Friday. This program provides a platform for the discussion of subjects of significance and interest in the Quint City area, but not necessarily those of a controversial nature. One series, for example, may deal with recent medical advancements, public health, etc. Another may feature basic legal concepts of interest to the layman.

(4) *Quint-City Forum*, 3:30 to 4 p.m., Monday through Friday; 1:30 to 2 p.m., Sunday. On this program, participants representing various points of view on a particular topic will balance their concepts, one against the other, in order that viewers may better evaluate the merits of opposing or conflicting theories. Subjects under consideration will usually be those of a local nature.

(f) Talk Programs:

(1) *On the Town*, 1:30 to 1:45 p.m., Saturday. This is an interview program devoted to talks with prominent and interesting personalities, principally, but not necessarily, of the area. When the use of visual material, such as slides or pictures, will enhance the presentation, it is planned to use them. This program will be produced by Midland's civic director, Paul Johnson, a stockholder.

(2) *Outdoors*, 11 to 11:10 p.m., Monday through Friday. This is Midland's presentation devoted to those sports which are ordinarily considered

to be of an individual, noncompetitive nature, such as hunting and fishing. The program will feature guests and demonstrations, as well as news of outdoor activities. This program will be produced and MC'd by Midland's sports director, John C. Lujack, a stockholder.

(3) *Do It Yourself*, 9:30 to 10 p.m., Saturday. This program is aimed at the man of the house, its objective being to assist him in the performance of various household repair and construction tasks.

(4) *Eye on the Quiet Cities*, 4 to 4:30 p.m., Sunday. This is Midland's regular remote telecast. The program is intended to present a live picture of the various phases of community life which cannot be portrayed adequately in a studio, covering such events as key meetings of various civic groups, fairs, athletic events, and rallies. It will be produced by Midland's public affairs director, Miss Atlass.

(5) *Sports Final*, 10:20 to 10:30 p.m., Monday through Sunday. This program is a daily report of scores and other events in the world of sports. To supplement the verbal reports, news pictures and films will be shown. The program will be produced and MC'd Monday through Saturday by Mr. Lujack.

(6) *Congress Reports*, 1:45 to 2 p.m., Saturday. This is a public service presentation which features Illinois and Iowa Congressmen and Senators giving periodic talks to their constituents. The reports will be on film. The program will be produced by Midland's civic director, Mr. Johnson.

(7) *Sports Review*, 6:15 to 6:30 p.m., Saturday. This is a roundup of the latest competitive sports news and scores, featuring interviews with leading athletes. It will be produced and MC'd by Mr. Lujack.

(8) *Bulletin Board*, 9:15 to 9:20 a.m., Monday through Friday; 8:15 to 8:20 a.m., Saturday. This program will be produced on behalf of and for local organizations in order to present to the viewers community organizational activities, announcements of forthcoming events, and news of general interest with respect to participating groups.

(9) *Weather*, 10:15 to 10:20 p.m., Monday through Saturday. This is a 5-minute comprehensive report of current and forecasted weather conditions on a national, regional, and local basis.

(10) *Women's Homemaker*, 10 to 10:30 a.m., Monday through Friday. This is the applicant's primary women's service program. It is intended to be informative with instructional overtones, covering the accomplishment of household duties, the activities of local women's groups, fashion shows, shopping guides, vacation surveys, literary reviews, interviews with people who are of particular interest to women, and the like. Many of the features will be special events, while others will be presented on a recurring basis. The program will be produced and MC'd by Midland's women's director, Miss Mease.

300. In addition to its local live programming, Midland has also scheduled extensive use of religious film, and plans to utilize considerable film coverage in other categories.

Participation of Midland's stockholders in the preparation and presentation of Midland's case

301. The record indicates that all of Midland's exhibits, with the exception of six technical presentations, were prepared by or under the direction and supervision of Midland's stockholders, each stockholder having personally collaborated on and worked in connection with the preparation of the exhibits which he or she introduced.

302. H. Leslie Atlass, Jr., testified, and it is found, that he had devoted all of his time to Midland's application and plans for its proposed operation from June 1957 through, at least, October 1958, and that, during that period, he made more than 30 trips to Molina, spending in excess of 15 weeks in the local area. He assisted in designing, along with Midland's chief engineer and an RCA repre-

representative, a custom technical installation for Midland, discussed an ABC affiliation in New York, assisted in the acquisition of Midland's transmitter site, and participated in a television familiarization program at WBBM-TV in Chicago for Midland's stockholders.

303. Mr. Stone testified, and it is found, that he selected the members of the agricultural program council, and that he arranged for the acquisition of market quotations for Midland's programing. He attended all but 1 of 15 formal meetings of the Midland group, and he estimated that he had devoted between 600 and 700 hours to Midland as of November 12, 1958.

304. Mr. Oakleaf indicated that during the period from April 1957 to November 12, 1958, he spent approximately 750 hours on Midland's affairs. In addition to assisting in the preparation of Midland's application, compiling information for presentation to the Commission, and assisting in the preparation of Midland's exhibits, Mr. Oakleaf assisted in the search for a suitable transmitter site and proper studio locations. He also contacted the architectural firm engaged by Midland, and reviewed the architectural plans, suggesting changes in the interim drawings.

305. Among other things, Mr. Oakleaf assisted in securing data from local contractors with respect to building construction and water supplies, and he secured applicable zoning clearances. He has been quite active in various matters concerned with the applicant.

306. Mr. Estess has devoted some 700 hours to Midland's affairs. He has attended the meetings held by the applicant.

307. Mr. Rosborough testified, and it is found, that he was instrumental in Midland's efforts to secure a studio site in Moline, and that he selected the members of Midland's discussion program council. He also requested and obtained approval from the Moline City Engineer and Building Commission for removal of certain height restrictions then applicable to Midland's Moline studio site, and corresponded with the Moline Zoning Board. He attended most of Midland's meetings.

308. Mr. Johnson estimated, and it is found, that he devoted at least 500 hours to Midland activities prior to November 12, 1958. He has attended most of Midland's meetings.

309. Mr. Frank Atlass II devoted a great deal of his time to the discussion of Midland affairs and problems with his sister, Harriet Jane Atlass, and his brother, H. Leslie Atlass, Jr. He also arranged meetings with suppliers of syndicated film to discuss the availability of their products in the Quint City area, and worked, as did all of the stockholders, on exhibit preparation, both in Chicago and in Moline.

310. Miss Atlass worked extensively in connection with Midland's public service presentations, preparing many of the formats and scripts thereof. She visited Moline upon different occasions in connection with Midland activities, and maintained liaison contact with Midland's religious, educational, and civic directors with regard to Midland's proposed programing.

311. Mr. Evans selected the members of the religious program council, and attended two formal meetings of that organization, in

addition to a general meeting of clergy prior to formation of the council. He was active in the preparation of Midland's program proposals, particularly as they dealt with religious programs.

312. Mr. Hoppe spent not less than 600 hours in the development of educational programs to be presented by Midland, and to making contacts chiefly with educators in the proposed service area. He has attended all but two of the formal meetings of the applicant, and he has participated in numerous informal meetings. He was instrumental in arranging a meeting of local educators, which subsequently led to the formation of Midland's educational program council.

313. Mr. Burrows became a director of the applicant on November 6, 1957, and has attended most of the formal and informal meetings held by Midland since that date. In connection with his contacts, exhibit preparation, and other activities, Mr. Burrows spent a minimum of 10 hours per week on problems concerning Midland during the period from his association with the applicant to November 12, 1958.

314. Mr. Lujack began to work actively on behalf of Midland sometime in January 1958, and devoted a minimum of 250 hours to Midland activities from that time until November 12, 1958.

Program contacts

315. With respect to program contacts, most of Midland's stockholders participated in an extensive canvass of the proposed service area, the aggregate contacts numbering 454. The breakdown of contacts made by individual stockholders, as well as by program classification, is as follows:

Stockholder	Entertainment	Religious	Agricultural	Educational	News	Discussion	Talk	Remotes	Total
H. L. Adams, Jr.	30			22	2	4	8		66
L. Stone			37				1		38
J. Oakleaf						36	10	6	54
A. Estess					13			2	15
J. Kestorovich	1					33		1	35
P. Johnson			1			15	1	3	20
F. Adams			1						1
H. Adams				1					1
C. R. Evans		68					2	3	74
M. Hoppe				25		1	1	10	37
J. Burrows	2			36		2	1	62	103
J. Lujack	1						6		7
Total	34	68	39	55	15	95	30	87	454

316. In the field of education, in excess of 80 school principals, school superintendents, and schoolteachers were contacted. Representatives of all school levels, from the lower grades to postgraduate, were contacted, and both city and rural school representatives were included in the survey. Midland made 68 contacts with religious leaders of the Quint City area, representatives of almost every faith present there.

317. In addition to contacting individual farmers and organizations such as 4-H groups and the local Farm Bureau in the proposed area, Mr. Stone made several professional trips to discuss agricultural programming with agricultural leaders.

318. Midland contacted in excess of 30 individuals and groups with respect to its survey of local talent, including a range of musical talent from "combo" type groups to the Tri-City Symphony and the Civic Music Association. Notwithstanding such contacts, however, the record reflects that Midland is of the opinion that the majority of its entertainment programs should emanate from the ABC network, providing that the discovery and promotion of talented local people is not overlooked.

319. More than 85 remote contacts were made by Midland's stockholders, and the testimony shows that Midland devoted considerable time to contacting individuals and organizations with respect to the practicality of specific remote telecasts and the availability of cooperation and assistance from those contacted. Additionally, Midland representatives personally checked telecast feasibility from the sites of proposed remotes.

320. Midland intends to accord programing representation to the various denominations in its proposed service area in accordance with discussions with its religious program council and the various ministerial groups and associations. It believes that it has attained assurances of the cooperation necessary to insure the presentation of its proposed religious program schedule, including both live and filmed remote presentations.

321. It appears that in every phase of its programing, Midland has made ample contacts, and, in large part, the proposed programing resulted therefrom or is consistent with the results of the contacts.

TV workshop and other stockholder preparation for broadcast activities

322. Nine of Midland's stockholders took part in what was termed a "TV Workshop symposium" on January 4 and 5, 1958, at the WBBM-TV studios in Chicago. Included among the members of the WBBM-TV staff who actively participated in the arrangements and briefings were the production manager and his assistant, the lighting director, the executive director, the engineer in charge of operations, and the farm director. Most, if not all, of the elements of television operation were exhibited and explained. A "mockup" simulating actual operating conditions in Midland's proposal was put in operation at WBBM-TV and 24 scripts from the various program categories (as proposed by Midland) were "run through." The various directors who would have charge of the real programs participated in the WBBM-TV venture. A number of Midland's stockholders who will be active in the station have visited other television stations to prepare themselves for their duties.

323. Additional planning factors (not previously mentioned) studied (and, in some cases partially crystallized) by Midland include: printing processes and machinery, basic furnishing materials, music copyright laws, preoperational payroll plans, Bell Telephone video and audio lines, special lighting equipment, air conditioning, insurance, depreciation schedules, and well digging.¹⁶

¹⁶ It is obvious that Midland seeks a preference for "planning for television," hence some evidence appears to be duplicative.

Illway Television, Inc.

324. The following is a list of the officers, directors, and stockholders of Illway, together with their holdings:

Name and residence	Office	Percentage of voting stock
Oscar W. Ellis, East Moline, Ill.	President, director	21.0
William E. Bettendorf, Bettendorf, Iowa	Vice president, director	6.8
Joseph M. Balach, Rockford, Ill.	Executive vice president, director	14.5
Stanley H. Guyer, Rockford, Ill.	Secretary, director	13.0
Robert W. Boeye, Rock Island, Ill.	Treasurer, director	2.6
R. H. Ryan, East Moline, Ill.	Director	1.0
Lambert I. Kordahl, Monmouth, Ill.	do	4.5
Kenneth G. Sturtevant, Rock Island, Ill.	do	5.8
F. H. Schierbrock, Davenport, Iowa	do	4.5
Charles F. Carpentier, East Moline, Ill.		2.7
John T. Mrazie, Rockford, Ill.		1.0
George Von Maur, Davenport, Iowa		1.0
Harry H. Cleveland, Rock Island, Ill.		2.6
M. E. Beckstrom, Moline, Ill.		1.8
S. P. Durr, Rock Island, Ill.		4.5
Richard V. Van Alostyn, Davenport, Iowa		1.8
Ery I. Klingbiel, East Moline, Ill.		1.0
John H. Ruhl, Davenport, Iowa		1.0
Ruth H. Davis, Rockford, Ill.		4.5
J. Paul Madison, Table Grove, Ill.		4.5
Estate of C. Arthur Ruhl, ² Bettendorf, Iowa		1.8

¹ Mr. Balach also has an option to acquire 1,000 additional shares. If he exercises this option, he will own 2.7 percent of the voting stock. Mr. Balach has testified as to his intention to exercise this option.

² C. Arthur Ruhl, who was formerly a director, passed away while the hearing was in progress. His wife is executrix of his estate.

325. *Oscar Ellis* is president, director, and a 21-percent stockholder in Illway. He was born in 1891 and has lived in the Moline area all his life. He is a member of local civic organizations.

326. Mr. Ellis is president, director, and a 26-percent stockholder in Moline Consumers Co., engaged in the sand, gravel, and building material business in Moline. Moline Consumers Co. has many subsidiaries, which it controls, or affiliated companies in which it has a stock interest. Mr. Ellis is an officer and/or director of many of these companies. The record shows his other business interests to be in excess of 20 companies, mostly located in Illinois. They include primarily businesses concerned with cement, stone, and beer and liquor distribution.

327. Because of the number of companies with which Mr. Ellis is connected, he doesn't remember, without consulting records, his exact connection with each company or its exact ownership. Mr. Ellis was asked questions about tavern owners and his relations with them. He supplied full information in response to these questions and none of the information elicited has any relevance to the questions presented in this case.

328. The Illway application and the direct case of Illway listed only the following business interests for Mr. Ellis:

Moline Consumer Co.	President and 26.6-percent stockholder.
Missouri Gravel Co.	Treasurer.
Central Stone Co.	Do.
Rock Island Ready-Mix Concrete	President.
LeClair Hotel, Inc.	Do.
LeClair Theater Bldg., Inc.	Do.

329. The failure of Mr. Ellis to list all his business interests is explained as follows: Mr. Ellis had received a blank form prepared by Boeye to collect the necessary information for the application. Although the form (p. 2) requested all the necessary information, there was only room for a few lines of information. Mr. Ellis filled out the form himself in his own handwriting and listed the six companies referred to above. He listed six of his major companies and thought that was sufficient. He felt he had listed the primary companies, particularly Moline Consumers Co., which is the primary company. At the time he was filling out the form, Mr. Ellis didn't know how many companies he was an officer in. He didn't know he was supposed to list all the companies he was connected with. Mr. Ellis didn't know his answer had been incomplete until he was notified about it by his Washington broadcast attorney who asked him to make a complete list of his business interests. This did not happen until January or February of 1959; he did not know that a complete listing of business interests was necessary when his direct testimony was prepared in October 1958. Ellis then had such information prepared and Illiway, through counsel, voluntarily furnished additional information on Mr. Ellis' business interests to the counsel for the other applicants. Before the hearing, Mr. Ellis discovered other companies that were missing from the list and voluntarily supplied these for the record. It is found that Mr. Ellis' failure to list all his business interests was unintentional and was not done to conceal information from the Commission. The evidence does not reflect adversely on Mr. Ellis or Illiway.

330. After Mr. Ellis became president of Illiway, he took part in all aspects of its plans and proposals and devoted much time to its affairs; he has attended all director and stockholder meetings and has had many conferences with individual stockholders concerning its plans. His main responsibility related to financial matters. He conducted the negotiations with Baisch, leading to Baisch's becoming general manager of Illiway. He has received many letters from local persons indicating they would cooperate with Illiway. He was examined as to his knowledge of Illiway's plans and demonstrated familiarity with them. He was acquainted with the NAB code and the policies of Illiway with respect to the code. He will devote one-half day a week to Illiway's affairs if Illiway receives the grant, staying in close contact with Baisch and Mazzie, and also with Bettendorf, whose role in Illiway's affairs is set out elsewhere herein.

331. *William E. Bettendorf* is vice president, a director, and 6.8-percent stockholder in Illiway. He was born in Davenport, Iowa, in 1902 and has lived in Davenport or Bettendorf, Iowa, all his life. He has lived in Bettendorf since 1941. He has been active in local civic affairs, being the organizer and first president of the Davenport Council of the Navy League.

332. Mr. Bettendorf holds a B.S. in mechanical engineering. Upon his graduation from college, he joined the Bettendorf Co. owned by his family, which has been the mainstay and largest industry for many years in Bettendorf, Iowa. The Bettendorf Co. was engaged in many fields of manufacturing and Mr. Bettendorf became active on

an operating basis in the affairs of the company and its affiliate companies. Later he became an officer of the Bettendorf Co. and other local manufacturing and utility companies. After the depression he was instrumental in the economic recovery of the Bettendorf Co. and its manufacturing activities. From 1941 until his retirement he was full-time president of the company. During World War II the company was engaged in the manufacture of Armed Forces products and received a Navy "E" Award. Upon his retirement Mr. Bettendorf maintained an active interest in the Bettendorf Bank & Trust Co., which he founded in 1949; he is president and 45-percent stockholder in the bank. In appreciation of his "outstanding leadership" and contribution to the general welfare and progress of Davenport and Bettendorf, he received a certificate of appreciation from the Davenport and Bettendorf Chambers of Commerce and he was the subject of a laudatory editorial in the Davenport Democrat.

333. Mr. Bettendorf once considered the possible establishment of a radio station in Bettendorf, but at the time did not consider it feasible for himself. He once acquired some stock in WOC-TV and he sold the stock on September 12, 1957, to an officer in the Bettendorf Co.

334. Mr. Bettendorf was examined on his knowledge of broadcasting and Illiway's proposal; he demonstrated familiarity with both. He was generally familiar with the NAB code as it is applicable to Illiway's policies.

335. After Mr. Bettendorf joined Illiway, he became active in the affairs of the corporation. As he became acquainted with its problems, he increased the amount of his activity and was eventually elected a vice president and director. He has devoted a large amount of time to all aspects of the affairs of the corporation. It was as a result, mainly, of Mr. Bettendorf's activity that Illiway has emphasized service to Bettendorf and has proposed an auxiliary studio in that city. He invited a number of members of civic organizations and educators from Bettendorf to the program plans meetings which Illiway had conducted. He attended both program plans meetings conducted by Illiway. In addition, he has received many letters from the local persons indicating that Illiway will have the cooperation of these persons and their organizations in the presentation of its programs.

336. If Illiway receives its construction permit, Mr. Bettendorf will take an active part in the day-to-day operation of the station. He has agreed to serve as an active officer of the company and he will devote on the average of one-third of his time to the affairs of the company. He will particularly aid the general manager and the station manager in the presentation of public service programs and programs for civic organizations and educational institutions. He will serve as a liaison between the station and many of these public service organizations and educational institutions. He will also aid the general manager and the sales manager in the sales activities of the station.

337. *Joseph M. Baich* is executive vice president, a director, and 4.5 percent stockholder in Illiway. He also owns an option to acquire

1,000 additional shares of stock; when this option is exercised he will own 8.7 percent of the voting stock of Illiway. He was born in Michigan in 1918 and he now lives in Rockford, Ill., where he is a stockholder, director, and general manager of WREX-TV, located in that city. If Illiway receives a grant, he will sever all connection with WREX-TV and move to Moline to serve as full-time general manager of Illiway's proposed station.

338. Mr. Baisch has had extensive operating experience in the film business and in the television business. As a young man he was employed as the manager of movie theaters in Green Bay and Kenosha, Wis. After serving in the Army as a combat flyer, he returned to the movie business and became district manager for Standard Theatre's Central District, supervising seven theaters. A year later, he was promoted to film buyer and head of the booking department for the Standard circuit of 36 theaters. In 1949 he was appointed general manager of Gran Enterprises, which owned real estate and served as management for a number of movie theaters and he also was an officer of that company. Gran Enterprises was controlled by L. F. Gran, who originally was a stockholder in Illiway. Mr. Gran gave Baisch his start in the movie business; they have been associated in various other business ventures together and they are good friends. However, Baisch has not worked directly for Gran since 1954 and since that time has not been under his direction or influence.

339. During the television freeze, as part of his duties for Gran Enterprises, Mr. Baisch became familiar with television and its operating problems in order to prepare himself to become a supervisory official in any television station in which Gran or his company might have an interest. He spent several years visiting television stations, attending industry seminars and meetings, studying at schools, and generally learning about television wherever he could. He prepared market studies and plans for potential television stations in Milwaukee, Green Bay, Duluth, and Rockford where Mr. Gran was interested in applying for television. Gran became connected with corporate applicants in each of these cities and the studies then continued for the applicant corporations.

340. Mr. Baisch's first experience with a television application was in connection with Lakehead Telecasters, applicant for a station in Duluth shortly after the freeze was lifted in 1952. The application was dismissed when Lakehead merged in March 1953 with Ridson, Inc. Initially it was proposed that Baisch would be a member of the Lakehead staff.

341. At about the same time in 1952, Mr. Baisch became connected with an application by Greater Rockford Telecasters, Inc., for a television station in Rockford, Ill. He participated in and helped prepare that application. He also helped prepare an application for Valley Telecasting Corp. which applied in 1952 for a television station in Green Bay, Wis. He did this work in both cases as an employee of Gran Enterprises.

342. Mr. Baisch became connected in 1952 with the application of Milwaukee Area Telecasting Corp. for a television station in Milwaukee. Mr. Baisch was a stockholder, treasurer, and director of

that corporation and was to be assistant general manager. He was involved in every aspect of this application, acting as coordinator in formulating all of the plans and proposals.

343. In May of 1953, Greater Rockford Television, Inc., received a construction permit for WREX-TV, located in Rockford, Ill. Mr. Baisch was employed by Greater Rockford to assist the general manager of that station in laying out, constructing, equipping, and staffing WREX-TV. He worked for Greater Rockford until shortly before the station went on the air commercially on October 1, 1953. He then returned to Milwaukee, at the request of its directors, to resume his full-time duties on the Milwaukee Area Telecasting Corp. proposal. Baisch remained an employee of Milwaukee Area until May of 1954 when the four Milwaukee applicants merged and a CP was granted to WTVW on June 11, 1954.

344. At about the same time as the Milwaukee merger, in May 1954, two stockholders in WREX-TV, Louis E. Caster and Swan Hillman, president and treasurer of WREX-TV, invited Baisch to confer with them in Rockford and offered him the position of general manager of station WREX-TV. His decision to accept the position was his own independent decision. He resigned his position with the channel 12 Milwaukee Area station and moved to Rockford the same month. He immediately entered his duties as general manager of station WREX-TV and he has held that position until this time. Baisch, however, retained his stock interest in the Milwaukee station.

345. In the summer of 1957, Baisch acquired, what appears to have been the beneficial interest in, 1.43 percent of the stock of Greater Rockford Television, Inc. He had acquired an option on this stock in 1954 during which time it was held by Louis Caster, president of WREX-TV, as trustee. When he bought the stock, he paid for it [\$1,500] out of his own funds. The option agreement was not filed by WREX-TV with the Commission until September 20, 1957. Shortly before that time (in August 1957) the stockholders in WREX-TV all agreed to sell their stock to Continental Television. When he learned of the proposed sale, Baisch took steps to finish his acquisition of the stock he had previously started to pay for. The option agreement was not filed with the Commission until after the agreement to sell WREX-TV was entered into. Baisch considered the stock option as a gentleman's understanding. He did not know that it had, in fact, been reduced to writing. In 1954, when the option was created, Mr. Baisch did not know that oral agreements such as this were required to be filed with the Commission. He found out later that agreements such as this were required to be reported, but never gave the filing of the oral agreement any thought; he did not know if it had been filed and did not determine if it had been filed. He first learned of the existence of the written agreement and saw it in the late summer of 1957; he then first found that it had not been filed, and he immediately recommended that it be filed. The WREX-TV lawyers discovered that the trust had not been filed during the negotiations with Continental for the sale of the WREX-TV stock because of the fact that the stock held in trust had to be provided for in the agreement of sale. The trust was filed with the Commission

at that time. By June of 1957, Baisch felt he had acquired ownership of the stock. The sales agreement with Continental, dated August 20, 1957, however, provided for the sale of this stock to Continental from Caster as trustee rather than Baisch as owner. The sale, although approved by the Commission, was never consummated. The trust agreement, therefore, continued in existence during the time the sales agreement was in effect and until it was certain that it had been completely called off late in 1958. In addition, the stock to be sold to Continental was held in escrow under the sales agreement; Baisch, therefore, did not get possession of the certificate because the stock was being held in escrow pending the sale to Continental. In July 1958, Continental notified the FCC that the sale would not be consummated. In September 1958, WREX-TV considered the trust as terminated and reported the acquisition by Baisch of the stock as of June 1957 from Caster as trustee. Baisch recommended it be reported at this time on the basis of discussions with WREX-TV lawyers. He did not acquire possession of the certificate until 1959 when the possibility of a suit arising from the termination of the sale to Continental was ended; the stock escrow continued until that time. He now has the right to vote the stock.

346. Baisch had personally reported his ownership of the WREX-TV stock to the Commission prior to the time a proper ownership report on a form 323 reflecting the purchase was filed by WREX-TV. He expressly reported it in the original Illiway application filed in November 1957, and also included the amounts he expected to receive from Continental for its sale in his statement of assets. The stock was included in his assets in a financial statement submitted to the FCC in January 1958. He included it in his assets in a statement filed by Illiway in August 1958. These actions on his part demonstrate conclusively that there he had no intent of concealing his ownership of the stock from the Commission. Likewise, the WREX-TV stockholders, when they signed the agreement of sale to Continental, which was filed with the Commission, openly revealed the trust agreement. On the basis of the evidence it cannot be concluded that any stockholder in WREX-TV had any intent to conceal any facts from the Commission. Baisch is free to sell his stock in WREX-TV.

347. In the early part of 1958, at the invitation of Louis Caster, largest stockholder (41 percent) in Caster-Robison Television Corp. which controls KOCO-TV, Enid, Okla., Mr. Baisch acquired 2½ percent of the stock in that company. Since that time he has periodically acted as a consultant to the station in connection with its operating problems.

348. During December 1958, at the invitation of L. F. Gran, Mr. Baisch acquired 4 percent of the stock in radio station KGA, Spokane, Wash.

349. In February 1959, Mr. Baisch had also acquired 2 percent of the stock in WDUL-TV, permittee of a television station in Duluth, Minn. He acquired this stock from Mr. Caster. Gran and his son own about 50 percent of the station. Guyer has never had an interest in the station.

350. The only stations Mr. Baisch has ever been connected with are WREX-TV, KOCO-TV, KGA, WTVW, and WDUL-TV. The only operating station he has ever worked for is WREX-TV.

351. As general manager of station WREX-TV, Mr. Baisch is completely responsible for and supervises all of the activities and operations of the station. He is active in and participates on a day-to-day fulltime basis in each of the operations of the station which are roughly classified as programing, engineering, and sales. He has wide discretion and determines what programs will be presented and the content of the programs themselves; what programs will be sponsored or sustaining; which sponsors and continuity will be accepted; and he determines how the station shall be operated from the point of view of engineering and production. He has developed, at Rockford, programs which would serve the needs and interests of communities other than Rockford. Illiway urges that this is important in light of the Illiway proposal to develop comparable programs for many communities other than Moline. He has participated in network contract negotiations and is solely responsible for the day-to-day relation of the station with the networks and the acceptance of network programs.

352. Mr. Baisch has had extensive experience in the selection and purchase of film for television and in developing the use of locally produced film in regular local programing.

353. Mr. Baisch has had extensive experience in the creation and production of a wide variety of local live programs, including remotes. His participation in the creation of these programs is not merely supervisory; he is actively engaged in the creation of the ideas and their implementation. He is also responsible for the selection and supervision of the WREX-TV staff and he supervises the coordination of the different parts of the staff. WREX-TV has received many awards while it has been under the stewardship of Mr. Baisch.

354. Some time after March 11, 1958, when Mr. Gran and his son, Bruce, decided to withdraw from the Illiway group, Oscar Ellis asked Baisch to take a full-time active role in the operation of the Moline television station. After consulting with Mr. Caster, its president, he finally agreed to accept the Moline proposition. He agreed that when Illiway got its grant, he would sever all connections with and dispose of his Greater Rockford Television, Inc., stock. He was then elected executive vice president and director of Illiway, as well as general manager. He became responsible for the determination of plans and proposals, working very closely with Jack Mazzie and the directors of Illiway, especially with respect to locally produced programs. With Mel Beckstrom he discussed the studio plans. He visited the theater building which will serve as Illiway's main studio and carefully examined it. With Mr. Mazzie, he has been responsible for the preparation of all of Illiway's plans and proposals. Mr. Baisch has devoted at least a total of 500 hours to his work for Illiway. He has visited Moline over 10 times and has had many discussions with the other stockholders and directors with respect to its plans and proposals. On most of his visits the stockholders and directors introduced him to various civic and community leaders with whom he has

discussed its proposed programing and plans. On June 26, 1958, Mr. Baisch conducted a programs plans meeting which was held in Moline and attended by at least 25 of the civic leaders of the Quint Cities area. Mr. Baisch has consistently devoted considerable time to participation in civic activities.

355. *Robert W. Boeye* is treasurer, director, and a 3.6-percent stockholder in Illiway. He was born in 1901 and has lived in Rock Island since 1939, practicing law in that city. He has been very active in local civic and governmental affairs and spends an average of a full day a week in such activity. Since 1953 he has been assistant attorney general for the State of Illinois for Rock Island County and he is a former chairman of the Rock Island County Bar Association. Among other things, he is a former chairman of the Rock Island Zoning Board of Appeals.

356. Mr. Boeye was primarily responsible for the organization of the local group in Illiway which now holds about 70 percent of the stock. He has served as local counsel for Illiway since the organization of the group as it is now constituted.

357. Mr. Boeye has been involved in almost every aspect of the corporation's affairs; he has participated in the development of the financial, program, and studio plans. He has attended all stockholder and directors' meetings and he has spent many hours in conferences and conversations with other stockholders, with respect to all of the plans and proposals of Illiway. He has particularly participated in the development of the program plans of Illiway and has had many conversations with Mr. Baisch and Mr. Mazzie with respect to these plans. He has acted as a coordinator for all of the plans of Illiway, transmitting suggestions and ideas of various stockholders to the persons responsible for the effectuation of these plans. He has talked to numerous persons concerning its proposed programs and he has received many letters indicating that Illiway will have the cooperation of local groups in presenting its programs. He is generally familiar with Illiway's proposals. Since he became connected with Illiway he has spent a minimum of one-half day a week involved in its affairs. Mr. Boeye intends to devote a minimum of a half day a week to the affairs of Illiway. He will continue to act as local counsel and he will participate fully as a stockholder, director, and an officer in all of the affairs of the corporation.

358. *Lambert I. Engdahl* is a director and 4.5-percent stockholder in Illiway. He was born in Monmouth, Ill., in 1895 and has lived there all his life. He is engaged in the automobile and farming business in Monmouth. He owns and operates 600 acres of land primarily for cattle feeding. He feeds 600 head of cattle a year and 1,000 head of hogs. He is in constant supervision of these farming operations and spends 3 or 4 days a week on these farms supervising all aspects of the operation. Monmouth lies within the grade A contour of the Illiway station.

359. In connection with his farm activities, Mr. Engdahl is fully acquainted with farm problems in the area and has regularly done business with local representatives of the Department of Agriculture, who act as farm agents and farm advisers in the area. He is a mem-

ber of the Farm Bureau and he has also been active for many years in local civic activities in the Monmouth area. He visits Rock Island frequently and does business there.

360. Mr. Engdahl had been especially interested in the farm programs which Illiway will present, and he has had many conferences and conversations with Mr. Mazzie and Mr. Baisch concerning these programs. He has personally participated in their development and has made suggestions which have been incorporated into the program plans. As a result of his proposal to the Illiway group, the group decided to secure an auxiliary studio which would have adequate land for actual outdoor farming operations.

361. Mr. Engdahl has discussed the program plans with farm agents and farmers in the Monmouth area who have given assurance that they will cooperate in the presentation of Illiway's proposed programs. He has also received many letters to the same effect. He attended the Illiway program plans meeting in January of 1958. Mr. Engdahl intends to spend one-half day a week in the day-to-day operations of Illiway's station, particularly in connection with the development of and participation in the farm programs. He intends to lend whatever technical assistance he can in the presentation of these programs.

362. *Stanley H. Guyer* is secretary, a director, and 18-percent stockholder in Illiway. He was born in 1903 and resides in Rockford, Ill., where he practices law. He has devoted a considerable amount of time to civic activities there and has served as president of the local county bar association.

363. Mr. Guyer is secretary, director, and a 7-percent stockholder of station WRÉX-TV, located at Rockford, Ill. He is also a minority stockholder in KGA, Spokane, Wash.

364. In 1957, together with others, Mr. Guyer became interested in applying for a television station in Moline. He was one of the prime movers in the organization of the company and he is the second largest individual stockholder. Through Mr. Engdahl, who had joined the group, he became acquainted with Robert Boeye and through his efforts met several people who became interested in joining the group. Ultimately, the group was organized and he was elected a director and secretary of the company. While he fully fulfills his responsibilities as a stockholder, officer, and director of the broadcasting companies, in which he has an interest, he takes no active part in the formulation of any of the broadcasting policies of these companies. He has approved the plans and policies of Illiway. He fully understands the policy of Illiway that there shall be no joint activity between WRÉX-TV and the Illiway proposed station, and he fully agrees with this policy. When and if Illiway receives its construction permit, he will dispose of his stock in Greater Rockford Television, Inc., resign any position he may then hold in that company, and sever all connection with that company.

365. *Frank H. Schierbrock* is a director and 4.5-percent stockholder in Illiway. He was born in 1899 and he came to the Davenport area in 1933. He has lived in Davenport since that time. Since December 1933, he has been engaged in the automobile sales business. He is at present president and a stockholder of Lujack-Schierbrock Chevrolet

Co., Schierbrock Motors, Inc., a real estate holding company, and Lease-a-Car Co., an auto leasing company. All of these companies are located in Davenport, Iowa.

366. Since he came to Davenport, Mr. Schierbrock has been very active in the civic life of that city. He has been president of the Community Chest. Since 1957 he has been a member of the board of trustees of St. Ambrose College, located in Davenport, Iowa. For 10 years, as one of two lay members, he has served as a trustee of the Sacred Heart Parish, which is the Cathedral Parish of the diocese.

367. Since he became a stockholder, Mr. Schierbrock has taken an active interest in the affairs of the corporation. He feels, and has corroborated to his satisfaction, that the program schedule proposed would serve the needs of the community; he has received letters from local groups indicating that Illiway would have their cooperation. If Illiway receives its permit, he will continue his active interest in the programming activities of the station, particularly serving as liaison between many of the civic and educational organizations of Davenport and the Illiway station. He will devote at least two afternoons each week toward the operation of the station.

368. *Benjamin H. Ryan, Sr.*, is a director and 1-percent stockholder in Illiway. He was born in 1897 and has lived in East Moline since 1910. In 1921 he joined the State Bank of East Moline as a teller and he has worked in the bank since that time. In January 1949, he became president of the bank and he is still serving in that capacity. He devotes a considerable amount of his time to participation in civic and governmental activities in the East Moline community. He has served as an alderman in the East Moline City Council for 8 years; thereafter, he served as city treasurer for 4 years; and during the years 1945 to 1953, he served as mayor of the city of East Moline. He helped organize the local chamber of commerce and the first local Community Chest Drive.

369. Since joining Illiway he has attended directors' meetings, conferences, and informal meetings with respect to the formation of plans and proposals of the company. He attended one of the program planning meetings conducted by Illiway and he invited several persons who also attended that meeting. He has discussed the specific program planning of Illiway with many of the leaders of the East Moline community. He has felt it important that the last remaining channel in the area which was to be in Moline, Ill., provided adequate service to his own community of East Moline. It is his intention, if Illiway receives a construction permit, to devote on an average of 3 hours per week to the affairs of the company. It will be his responsibility to see that East Moline receives the service it needs.

370. *Kenneth G. Sturtevant* is a director and 6.8-percent stockholder in Illiway. He was born in 1901 and has resided in Rock Island since 1923. He was formerly majority stockholder and an officer of the Sturtevant Dairy Products Co., with which he was connected during the years 1923 to 1954. In the latter year the company was sold to the Borden Co. He is also a director and stockholder of the First National Bank of Rock Island, Ill. He is moderately active in local civic affairs.

371. Mr. Sturtevant has attended directors' meetings and participated fully in the formulation of the plans of Illiway, including its programing. He has received letters from local groups indicating that Illiway will have the cooperation of these individuals and their organizations in the presentation of its programs. It is his intention to maintain an active interest in the affairs of Illiway if it receives a construction permit. He will devote on the average of 2 hours a week to the affairs of the company, particularly in connection with sales activities.

372. *John T. Mazzie* is a 1-percent stockholder in Illiway and its proposed station manager. If Illiway receives a grant, he will move to Moline to devote his full time to the station's activities. He was born in 1924 in Omaha, Nebr., and received a B.S. degree from Creighton University in 1950.

373. Mr. Mazzie has had extensive operating experience in the television business, particularly in the creation, presentation, and production of programs. His interest in broadcasting started while he was an undergraduate at Creighton. While at the university he acted as a student instructor in radio technique and he served as student director and stage manager of the Creighton Players. He also, during this time, did commercial radio recordings on a freelance basis.

374. Beginning in October 1947, radio station WOW in Omaha started its work on closed-circuit television in the campus auditorium. Mazzie went to work without pay for this television operation to learn the television business. He served as a prop boy, scenery technician, mike boom operator, set lights, pushed cameras, acted, assisted engineers in setups and teardowns. Before he graduated from college, in August of 1949, he was hired by WOW-TV as floorman. During his work with the station, he learned all aspects of the program operation of a television station. After serving as floorman, he was appointed a director, designing, producing, writing, and directing live television programs. He had, before this time, learned camera operation, film projection, lighting, staging, makeup, and all the other technical aspects of television production; he performed all of these duties from time to time. In 1952, he became executive producer of WOW-TV. In this capacity he supervised the production manager, and inter-related the production activities of the station with the sales and other departments. He worked closely with the program director in the creation and presentation of all programs. He worked for WOW-TV until August of 1953, when he joined WREX-TV as production manager. Early in 1954, he became program director of WREX-TV, and he has held that position until this time. If Illiway gets a construction permit, he will sever his connections with that station and take up his duties with Illiway.

375. As program director at WREX-TV, Mazzie actively supervises and participates on a day-to-day basis in the activities of the production, art, film, news, sports, staging, traffic, and continuity departments. He is directly responsible on a day-to-day basis for the actual creation and final production of all programs. His program ideas and plans are submitted to Baisch and, working closely with him, are inte-

grated into existing program structure. He is responsible for the staffing assignments of the station. He is in close contact with community leaders and groups. When Baisch is away on national sales, he is in charge of all operations in his own departments. He has created many valuable programs described in the record. Mr. Mazzie devotes a considerable amount of time to participation in civic activities. He has addressed many local civic groups.

376. Mr. Mazzie has been involved in the affairs of Illiway since the summer of 1957. The development of Illiway's plans and proposals, particularly before Mr. Baisch was selected as general manager, was primarily his responsibility. Mazzie conferred extensively with the local stockholders to obtain their views for the work both before and after the application was filed. He participated in the program plans meeting held by Illiway in January 1958. He helped select the auxiliary studio and reviewed the equipment and staff proposals, preparing the formal plans in these respects. Mr. Mazzie originally was to be general manager of Illiway's station. Later, when Baisch was selected for the position, he stayed with the company, at Baisch's invitation, and agreed to serve as station manager. Since that time, he has worked continuously with Mr. Baisch on all of the plans and proposals, and together with him prepared the program, staff, and technical plans of Illiway. He has visited Moline several times and has spent in excess of 500 hours in working on the applicant's plans and proposals.

377. *Charles F. Carpentier* is a 2.7-percent stockholder in Illiway. He was born in Moline in 1896 and has lived in the Moline area all his life, and now resides in East Moline. For many years, he has been in the motion picture business in that area. He is a stockholder in two outdoor movie theaters in the Quint Cities area, which have a capacity of 350 autos each. There are, however, 16 other theaters in the area and these theaters are of comparable size.

378. Mr. Carpentier has been very active in the civic affairs of his community and of the State of Illinois. In 1952 he was elected secretary of state of the State of Illinois, and he is now serving his second term. Because of his official duties, he spends much of his time in Springfield and Chicago.

379. Mr. Carpentier has discussed the plans of the station, particularly its programming, with the other stockholders. In the event that Illiway receives a construction permit, he intends to continue his interest in the affairs of the company and will do everything he can to aid in the presentation of programs which will fully serve the Quint Cities area. Because of his official duties, he is unable to estimate the amount of time which he will be able to devote to the affairs of the station, but will devote whatever time is available.

380. *George Von Maur* is a 1-percent stockholder in Illiway. He was born in 1901 in Davenport and has lived there all his life. He graduated from Yale in 1924. Prior to 1937, he was engaged in retail merchandising in the Davenport area, and since that time he has been connected with Quail & Co., investment bankers, in Davenport, Iowa; for the last 15 years he has been a partner in that company and vice

president. He is an allied member of the New York Stock Exchange. All of Mr. Von Maur's time is taken up with his business.

381. Since joining the group, Mr. Von Maur has taken an active interest in the affairs of the company. He invited several persons to one of the program plans meetings conducted by Illiway, and he attended that meeting. He has attended the stockholder meetings. If Illiway is awarded a construction permit, he will continue his interest in its affairs, principally financial.

382. *Harry H. Cleaveland* is a 3.6-percent stockholder in Illiway. He was born in Rock Island in 1926 and has lived there all his life. Since 1951 he has been a partner in the H. H. Cleaveland Agency, engaged in the general insurance business in Rock Island. He is an officer and stockholder in a local office equipment company and a director and stockholder in the Black Hawk Federal Savings & Loan Association. Two years ago he joined with G. LaVerne Flambo in organizing the Knox County Broadcasting Co., which applied for and received a license to operate an AM station in Galesburg. This station, WQUB, has been on the air for about a year. He is vice president, treasurer, and a 10-percent stockholder in that company.

383. Mr. Cleaveland regularly devotes a substantial amount of his time to participation in civic activities in Rock Island and the Rock Island area.

384. After Mr. Cleaveland joined the group, he became fully active in its affairs. He has attended stockholder meetings and he has had many conversations about the affairs of the proposed station with other stockholders. He has been particularly interested in the proposed programing of the station, principally regarding civic affairs. He has conferred with many members of the community about the proposed programing, in order to learn of the type of programs individual organizations would like to present. He attended a program plans meeting conducted by Illiway which took place on January 30, 1958. He would devote on the average of 3 hours a week to the affairs of the station.

385. *Melvin R. Beckstrom* is a 1.8-percent stockholder in Illiway. He was born in 1904 in Moline and has lived there all his life. He attended the University of Illinois and took a degree in architecture in the College of Engineering in 1930. After he graduated he returned to the Moline area and since that time he has been a practicing architect, engaged in his own business. He is vice president of the Quad-City Architects Association and he has been active in the affairs of that association since its creation. Mr. Beckstrom has been a member of the Moline City Planning Commission since 1938 and he is now chairman of the plats committee of that commission and a member of the building codes commission of appeals of Moline. He formerly served as a member of the Moline Zoning Commission for 4 years. Mr. Beckstrom has been active in many civic organizations in the Moline area.

386. Since Mr. Beckstrom joined the Illiway group, he has concerned himself primarily with the work involved in the planning of the proposed studios. He has spent considerable time consulting with both Mr. Baisch and Mr. Mazzie as well as other stockholders concern-

ing the development of these plans, which he designed. He is also interested in civic programing. He will devote on the average of 3 hours a week to Illiway.

387. *Samuel P. Durr* is a 4.5-percent stockholder in Illiway. He was born in 1911 and attended Creighton University of Omaha, Nebr. He received his medical degree at Creighton in 1936. He has practiced medicine in Rock Island since 1937.

388. As a doctor, Durr has devoted a considerable amount of time to local and State medical affairs. He has been particularly active in the Rock Island County Medical Society and the Iowa-Illinois Medical Society, having served as president of both of these organizations, in 1950 and 1952, respectively. He has served on practically every committee of these organizations from time to time and he has served as chairman of most of them. He has been very active in other civic organizations outside the medical field. In the past he has taken an interest in and participated in the broadcasting over radio and TV of health programs and programs dealing with health. He has appeared on local radio stations on several occasions on such programs and he also has appeared on local TV stations three or four times in connection with such programs. On one occasion he became actively interested in the preparation of a regular TV program which would deal with medical affairs and problems. It is his hope that Illiway will be able to present health programs from time to time on some of the regularly scheduled programs set aside for local civic organizations.

389. Dr. Durr expects to take an active role in the program plans of the station in connection with such programs, and he intends to cooperate and advise with Mr. Baisch and Mr. Mazzie about such programs. He intends to spend on the average of 10 hours a month in connection therewith.

390. *Ray I. Klingbiel* is a 1-percent stockholder in Illiway. He was born in Moline in 1901 and moved to East Moline when he was a small child. He has resided in East Moline ever since that time.

391. Mr. Klingbiel received an LL.B. degree from the University of Illinois Law School in 1924. He practiced law in East Moline between the years 1924 and 1945. During the years 1925 and 1939, he served for 12 years as city attorney of East Moline. From time to time he also served as city attorney in various small villages in Rock Island County. In 1945 he was elected to the 14th Judicial Circuit, which covers Rock Island, Whiteside, Mercer, and Henry Counties, and he served as judge in the circuit for 8 years. In 1953 he was elected to the Supreme Court of the State of Illinois and was reelected in 1957. He is serving in that capacity at this time. Since 1946 he has served as a director of the State Bank of East Moline.

392. During the years before Mr. Klingbiel assumed the bench, he was very active in the civic and community life of the city of East Moline. In 1939 he was elected mayor, in which capacity he served between the years 1939 and 1945.

393. Mr. Klingbiel joined the Illiway group because of his interest in good government and public service. He has discussed the plans of the station with Mr. Boeye, Mr. Baisch, and Mr. Mazzie. He attended one of the program planning meetings conducted by Illiway.

394. Although Mr. Klingbiel is required to be in Springfield in connection with his judicial duties between 3 and 4 months of the year, he spends the rest of his time at his home in East Moline. He intends to maintain his interest in Illiway's programing and will consult and serve with the management of the station in such matters and lend whatever assistance he is in a position to provide.

395. *Richard F. Van Alstyne* is a 1.8-percent stockholder in Illiway. He resides in Davenport. He has attended several of the meetings of the stockholders of Illiway Television, Inc., and he has approved the plans and proposals submitted at these meetings.

396. *Ruth H. Davis* is a 4.5-percent stockholder in Illiway. She lives in Rockford, Ill. Her husband is Charles H. Davis, a member of the Supreme Court of Illinois. She is a member of several local Rockford civic organizations.

397. *J. Paul Madison* is a 4.5-percent stockholder in Illiway. He resides in Table Grove, Ill., which is 65 miles from Moline. He was born in Pittsfield, Ill., in 1899. In 1957 he was elected mayor of the village of Table Grove. If Illiway gets its construction permit, it is his intention to act as liaison between the station and the communities near Table Grove which lie within the coverage area of the station.

398. *John H. Ruhl* is a 1-percent stockholder in Illiway. He was the brother of the late C. Arthur Ruhl, who also was a stockholder. He resides in Davenport and has resided there all his life. He is engaged in the investment banking business as a partner in Quail & Co., located in Davenport. He has been a member of the Davenport Chamber of Commerce since 1935.

Past performance and operation of WREX-TV

399. In light of the connection of Guyer and Baisch with WREX-TV, it becomes important to evaluate the record of performance of that station. In addition, Illiway has relied on the experience of Baisch and Mazzie in the television field and has offered detailed evidence as to the nature of their experience in the operation of WREX-TV. The quality and content of the WREX-TV programs and the policies are the responsibility of Baisch and Mazzie. WREX-TV generally follows the NAB code. The station has established a policy created by Baisch of becoming completely integrated into the community life of the viewing area. This meant that the station not only was to be fully integrated into the life of Rockford, but also into the community life of many of the other cities and communities which are served by WREX-TV. The program service which WREX-TV has rendered has continuously served not only Rockford, but other communities such as Beloit, Jonesville, Freeport, etc. By presenting individuals from these communities, promoting local causes and organizations in these individual cities, the station has furthered its policy.

400. Station WREX-TV has regularly accepted sustaining network programs directed toward minority audiences and special network programs. The station interrupts its scheduled programs, both sustaining and commercial, to present such network programs. Because of economic problems, the station frequently is not ordered for

certain commercial network shows. It has now succeeded in obtaining many of these programs on the basis that the commercials will be cut out. WREX-TV utilizes this opportunity by injecting public service spot films and/or slides and "Community Billboard" announcements for national, regional, and local public service activities.

401. It is the policy of the station to screen film content carefully so that objectionable film material will not be presented on the station. The station established and still maintains its own photographic department which uses sound-on-film cameras, Bolex hand cameras, and still cameras. The station also has the necessary development equipment for processing locally produced films, which are used in most types of programs. A basic characteristic of WREX-TV's past performance is the regular presentation of local live produced programs.

402. Under Baisch's direction the station has regularly presented extensive farm programs (including gardening); educational programs on a very wide and thorough basis; religious programming "in depth" on a remote basis and otherwise. In addition, at appropriate seasons the station presents special religious programs. All religions are represented.

403. WREX-TV has presented, on a regular basis, talks and discussions by representatives of civic organizations and other leaders in the area, and it has promoted the discussion of controversial issues in other programs. From time to time the station has presented special series of programs dealing with governmental affairs. Every year, in connection with the Community Chest Drive, the station presents discussions and talks by representatives of the local Community Chest and affiliated organizations. Other similar programs are presented; i.e., youth, safety, symphony orchestra, etc. Under Baisch's supervision and direction, WREX-TV has expanded its news programs. WREX-TV originates four locally produced news programs each day. Local and other sports are well represented. The station cooperates in civic celebrations throughout the service area, at times using remotes.

404. Station WREX-TV has received numerous awards for promotion and related activities. The station has received awards for its public service programs.

405. WREX-TV has a policy of not editorializing on the air with respect to controversial issues. A question was raised during the hearing as to whether WREX-TV, through Baisch, editorialized over the air on the subject of pay-TV or in any other way conducted its operations improperly in connection with this subject. On the basis of the record, it is concluded that WREX-TV did nothing improper, did not take an editorial position on the subject, and handled this controversial issue properly in accordance with its responsibility as a licensee.

406. In January 1958, Mr. Baisch attended a CBS affiliates meeting in Washington, during which pay-TV was discussed. After that meeting WREX-TV presented four programs over the air dealing with pay-TV. The station took no editorial position on the subject over the air. The programs it presented were as follows:

a. A debate between executives of CBS and Skiatron taking opposing points of view on the subject. This was a half-hour network program offered by CBS presented by the station on a delayed basis.

b. A short film program in which Representative Arends, an Illinois Congressman, gave his point of view in opposition to pay-TV. Arends supplied the film to the station at Baisch's invitation. Baisch had heard that the Congressman was interested in the subject; at the time Baisch made the request, he did not know his views and Baisch did not know Mr. Arends' views on pay-TV before he scheduled the program.

c. A short film program in which Representative Allen, local Congressman, gave his point of view in opposition to pay-TV. This statement was carried on a newscast in early 1958 and was filmed for WREX-TV. The statement was invited by WREX-TV. Baisch saw Mr. Allen's statement before it was presented. These statements of the two Congressmen were presented before WREX-TV began a promotion described next below.

d. A Man-on-the-Street broadcast, on March 31, 1958, consisting of interviews of members of the public on the subject of pay-TV presented on the daily "On-the-Spot" program, described above. Six or seven members of the public were chosen at random and various unselected views were expressed. The views expressed were neither edited nor censored. The station presented the program because it felt it should present a discussion by members of the public of this controversial issue.

WREX-TV also ran some local news ads against pay-TV; a mat for one ad was supplied by the CBS Advisory Affiliates Board, but WREX-TV made changes in it. In a promotion advertised in newspapers, people were urged to vote on the question of pay-TV versus free-TV. Ballot boxes were distributed at the place of merchants participating in the promotion. Members of the public could secure a ballot there upon which they could record their vote and enter a limerick contest on the subject of pay-TV. The merchants paid WREX-TV for advertising and received in return display materials, ballots, and spot announcements as part of a package deal. The promotion was run by a commercial firm, which gave WREX-TV an allowance for the ads dealing with the promotion. The limerick contest permitted the contestant to write a line either in favor of or against pay-TV. Three different prizes were awarded on the basis of winners picked by Rockford College; the prizes were awarded in shows carried over the air. In presenting information over the air with respect to its promotion contest, the station did not make known its own views or the views of any other person of the pay-TV issue. The form of the limericks on the ballot or the winning limericks were not presented over the air. Baisch had never seen the winning limericks and doesn't know whether they were for or against pay-TV. The results of the poll were reported by the college to the station, but were never used in any way by the station or reported to anyone for their use.

407. The percentage of time devoted to the various types of programs on station WREX-TV for the composite week 1957 was as follows:

	Percent
Entertainment	79.4
Religious	2.1
Agricultural	2.5
Educational	1.2
News	5.5
Discussion	1.9
Talks	7.2
Miscellaneous .....	.2
Total	100.0

408. The program log analysis of station WREX-TV for the composite week 1957 (ibid.) was as follows:

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
1. Network commercial (NC).....	44.3	60.2	7.5	47.6
2. Network sustaining (NS).....	18.1	0	15.2	12.3
3. Recorded commercial (RC).....	10.2	12.8	57.8	16.4
4. Recorded sustaining (RS).....	20.3	2.8	12.6	14.2
5. Wire commercial (WC).....	0	0	0	0
6. Wire sustaining (WS).....	0	0	4.4	.5
7. Live commercial (LC).....	2.9	9.2	0	5.1
8. Live sustaining (LS).....	3.2	6.0	2.3	3.9
9. Total commercial (1+3+5+7).....	58.4	91.2	65.3	69.1
10. Total sustaining (2+4+6+8).....	41.6	8.8	34.7	32.9
11. Complete total.....	100.0	100.0	100.0	100.0
12. Actual broadcast-hours (per week).....	68:17	25	13:19	116:26
13. Number of spot announcements (SA) (per week).....	82	126	34	244
14. Number of non-commercial spot announcements (NC-SA) (per week).....	196	23	34	266

409. On the basis of the foregoing findings, it is further found that the programming at WREX-TV, while leaning heavily toward entertainment, has been "good" and consistent with the interests of the community (ies) WREX-TV serves.

History of Illiway: Program planning and policies: assurance of local cooperation

410. The history of Illiway shows that the principals and/or stockholders have, since early in 1957 (when Stanley Guyer got the idea of a television station on channel 8 in Moline), made intensive studies of all phases of television as applicable to the community. Thus, those in Moline [the area] who were interested, as well as those from outside the area, analyzed the market, studied station needs, sought for and examined studio locations, and studied existing programming—among other things. Many meetings were held, formal and informal, amongst themselves.

411. It was agreed from the outset that control of the group would be in the hands of those of the group who came from the Quint Cities area. The local group felt that they controlled more than half of the stock on the basis of the original organization. Mr. Engdahl was considered part of the local group. Guyer, the Grans, Mazzie, and Baisch, who were considered not in the local group, were accepted because of their experience in broadcasting upon which the local group would have to rely.

412. After September 9, 1957, Illiway proceeded with the work of completing the group that would apply for the television station. Those from the Quint Cities area who were already in the group talked to their friends in an effort to create as wide a basis as was practical. Among the matters discussed were financing, location of the station, its operation, and programming. Baisch, Mazzie, Gran, and Guyer had come to Moline during this period to discuss these matters with the local group. Particularly Baisch and Mazzie discussed the proposed programming with members of the local group. A final meeting

was held November 6, 1957, when the application was signed. At the same time as the foregoing activities were in progress, Illiway constituted itself in effect as a committee to talk to or to contact as many persons (community leaders, etc.) as possible about its proposed station, and to get as many ideas as possible about the kind of programs it should present. Four to seven forms of letters were prepared for sounding out opinions on different types of programs. The letters were mailed at the end of January 1958. The replies were read by the stockholders who then sent them to Boeye and he, in turn, sent them to Baisch and Mazzie for use in connection with the work they were doing on the programing; the latter discussed the replies with individual stockholders. Mr. Mazzie was at all times in close contact with the stockholders in the Quint Cities and continuously discussed with them the information that was received from the people that were contacted on these matters. Mr. Boeye was also active in making contacts. Through this continuous interchange of ideas and information, the actual content of the programs which Illiway had designed became crystallized and ultimately led to the programs proposed by Illiway.

413. Illiway reasonably relied upon the assurance of cooperation it received. Its planning and preparation in this regard were fully adequate. It is also found that local persons and public service organizations contacted by Illiway will cooperate with Illiway if it is successful. Baisch and Mazzie made a thorough review of Illiway's proposals and prepared a revised program schedule, submitted to the Commission in June of 1958, and the more detailed program proposals submitted at the hearing. This schedule was based upon all of the studies and contacts with local groups which had been made by the stockholders of Illiway.

414. Mr. Guyer, as did Mr. Mazzie, agreed to sever all connections with WREX-TV if Illiway got its grant; if Illiway gets its grant, there will be no connection between the two stations.¹⁶

415. It will be the policy of the station to make time available for the discussion of controversial issues, and Illiway has incorporated such programs into its program schedule on a regular basis. Time will be made available to political candidates and the station will fully comply with the letter and spirit of section 315 of the Communications Act. Illiway recognizes a specific duty to serve the governmental organizations and civic organizations located within its coverage area, and specific programs have been incorporated in its program schedule for this purpose. Illiway Television, Inc., intends to become a member of the NARTB and will subscribe to the NARTB code. It will be the policy of the station to follow the television program code of the NARTB. Beer and/or wine advertising would usually be restricted to hours when children would not be viewing.

Program proposals

416. Illiway proposes to broadcast weekdays from 7:30 a.m. to midnight, on Saturdays from 5:30 a.m. to 12:50 a.m., and on Sundays

¹⁶ Guyer and Baisch are the only stockholders of WREX-TV who are also stockholders in Illiway. It is understood that Guyer and Baisch would not be stockholders in Illiway and WREX-TV at the same time.

from 9:30 a.m. to midnight. It will operate a total of 110 hours 35 minutes a week. Its program schedule includes ABC network programs. All applicants propose an ABC network affiliation and such an affiliation will be available to the successful applicant. Each will have available to it necessary film, record, and wire services.

417. The following is the percentage of time to be devoted to various types of programs in a typical week:

	Percent
Entertainment.....	67.07
Religious.....	3.6
Agricultural.....	3.28
Educational.....	4.00
News.....	7.38
Discussion.....	4.67
Talks.....	10.00
Total.....	100.00

418. The following is the program log analysis for a typical week:

	8 a.m.- 6 p.m.	6-11 p.m.	All other hours	Total
	Percent	Percent	Percent	Percent
1. Network commercial (NC).....	29.74	64.46	0	29.4
2. Network sustaining (NS).....	3.26	1.5	0	3.62
3. Recorded commercial (RC).....	21.3	12.14	74.25	22.75
4. Recorded sustaining (RS).....	13.77	0	5.57	3.64
5. Wire commercial (WC).....	0	0	0	0
6. Wire sustaining (WS).....	0	0	0	0
7. Live commercial (LC).....	13.15	9.32	0	10.32
8. Live sustaining (LS).....	16.78	12.36	20.18	13.67
9. Total commercial (1+3+5+7).....	64.19	86.13	74.25	72.07
10. Total sustaining (2+4+6+8).....	35.81	13.86	25.75	27.98
11. Complete total.....	100.00	100.00	100.00	100.00
12. Proposed broadcast-hours.....	66:30	35:00	9:05	110:35
13. Number of spot announcements (SA) (per week).....	94	98	15	207
14. Number of noncommercial spot announcements (NCSA) (per week).....	80	43	80	173

419. The following is a description of the locally originated programs which will be presented by Illiway:

a. Agricultural programs:

(1) *Rural Review* (LS)—At 11:45 a.m., Monday through Saturday, Illiway will present from its Bettendorf studios a 30-minute program designed especially for agricultural viewers. The program will be composed of four parts, each flowing into the other to make an integrated whole.

(a) Agricultural news, using silent and sound film, still photographs, and live guests;

(b) A graphic presentation of local, regional, and national cattle, hog, sheep, grain, and commodities quotations as well as futures and estimates.

(c) A farm feature in an "on the farm" setting. County agents and farmers will appear on the program. Locally produced film and film clips obtained from educational institutions will also be used.

(d) A comprehensive weather report.

(2) *Youth on the Farm* (LS)—On Saturdays at 10:45 a.m., Illiway will present, from its Bettendorf studio, a 30-minute program for rural youth featuring area 4-H, FHA, FFA, and other rural youth organizations.

(3) *Farm Film* (RC, RS)—On Saturdays at 11:15 a.m., Illiway will present films of interest to rural viewers obtained from industrial firms.

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agricultural colleges, and the U.S. Department of Agriculture. The program, normally, will not be sponsored.

(4) *It's Your Town* (25 percent Agricultural) and *Morning in Moline* will contain portions of an agricultural nature.

b. Discussion programs:

(1) *Topic for Today* (LS)—Every weekday Illiway will present a 15-minute discussion program dealing with a topic of current interest to women. The program will be presented at a time when Illiway has a large women's audience.

(2) *Spotlight on Industry/Labor* (LS)—On Tuesday evenings at 9:30 p.m., Illiway will present a 30-minute discussion and talk program directed to both controversial and noncontroversial issues. Locally produced film will be used.

(3) *Community Life* (LS)—On Friday nights at 9:30 p.m., Illiway will present a 30-minute discussion and talk program presenting facts which make up community life in the Quint Cities. Organizations and their contributions to the communities will be highlighted and interpreted.

(4) *Let's Discuss It* (LS)—On Sunday evenings at 9:30 p.m., Illiway will present a 30-minute program devoted solely to discussion of controversial, national, and local issues. During political campaigns, qualified candidates will be invited to present their platforms.

(5) *It's Your Town* (LS)—On Thursdays at 9:30 p.m., Illiway will present a 30-minute program in which area communities will present "their town" to the viewers. City officials will discuss town problems and present proposed projects for city or town betterment. Farm leaders will also be used.

(6) *Morning in Moline* (10 percent discussion) and *Teen Forum* (100 percent discussion) will also present discussions.

c. Education programs:

(1) *The 10:15 Strip* (LS)—Each day at 10:15, Monday to Friday, Illiway will present a 15-minute live sustaining program in cooperation with Quint Cities educators and educational institutions and directed to the preschool youngster. At other times, a "teacher" employed by Illiway would conduct the program. The program would occasionally originate from the Bettendorf studios.

(a) *Let's Make Music* (Monday)—Toy counterparts to "big brother" instruments will be demonstrated and records featuring the instrument of the day will be played. Occasionally adult musicians will demonstrate the "big" instrument; gifted young people will demonstrate their musical proficiency.

(b) *Let's Meet the Animals* (Tuesday)—Beginning with an abbreviated version of an established "animal tale," children would meet the "animal of the day." Generally, these will be film clips appropriate for use in the program.

(c) *Let's Draw a Picture* (Wednesday)—Starting with a simple figure, a picture of a familiar object is drawn. Step-by-step advice is passed on to the young viewer during this process, until identification is made. From time to time safety material will be presented.

(4) *Let's Hear a Story* (Thursday)—A program devoted to the telling of classic children's stories. Kindergarten children will be invited as on-camera audience and help select future stories.

(e) *Let's Have a Party* (Friday)—Preschool youngsters who have celebrated their birthdays during the previous week, or on the date of this telecast, will be invited to a studio party.

(2) *The Four-Thirty Strip*—Every weekday at 4:30 p.m., Illiway will present a half-hour live sustaining program directed toward the teenager and high school student. Local educational institutions will participate in the presentation of these programs which from time to time will be presented from the Bettendorf studio.

(a) *Meet the Team* (Monday)—This will be a presentation of area high school teams and their coaches discussing schedules, future plans, and introduction of team members of note.

(b) *School Days* (Tuesday)—This program will be directed specifically at the students of the immediate pre-high-school age, the "not-quite" or "just barely" teens. Each week will find a different school featured. Questions will be submitted. Counselors will be qualified teachers.

(c) *Tech Forum* (Wednesday)—This part of the strip will feature area teenagers as panel members discussing issues submitted by fellow students and/or viewers. The panel will be selected from the student bodies of area high schools.

(d) *High Time* (Thursday)—"High Time" will spotlight local or area high schools. The station will, by film, visit the featured school, meet the principal or superintendent who will give the background or history of the school, and visit a specific department. A high school bulletin board announcing upcoming area school events will be integrated in this program format.

(e) *The 8 Ball* (Friday)—Primarily a teenage dance party, live and on-stage, this program will serve as showcase for area schools' individual and group talent. One high school will be invited to the ball each week and performers will come from its ranks.

(3) *Mississippi Mural* (LS)—On Saturday at 1:45 p.m., Illiway will present a quarter-hour program devoted to the telling of the rich historical past of the Quint Cities area and the Mississippi River Valley.

(4) *It's Never Too Late* (LS)—On Mondays at 9:30 p.m., Illiway will present a 30-minute program designed to stimulate adult thought and to interest individuals in new areas for personal betterment. Area colleges will participate in this program on a rotating basis.

d. Entertainment programs:

(1) *Talent Parade* (LS)—On Sundays at 5 p.m., Illiway will present a 30-minute showcase for amateur performers in the channel 8 area. Following auditions conducted at publicized periods by qualified channel 8 staffers, successful candidates will compete for a weekly prize. Winners at weekly competitions will meet at the conclusion of regular cycles to vie for a grand championship prize.

(2) *Hayloft Jamboree* (LC)—On Saturday at 12:15 p.m., Illiway will present from its theater-studio a 30-minute informal town and country music program with the accent on melody. Audience participation will be welcomed.

(3) *Kiddie Kartoons* (RS)—At 10:30 a.m. on weekdays, Illiway will present selected cartoons for children. The human element will be eliminated through the use of mechanical animals with prerecorded gimmick voice introductions to cartoons.

(4) *Funny Folk Flicks* (RC)—On weekdays at 12:15 p.m., Illiway will present a luncheon time program for home-from-school children and pre-schoolers, featuring edited silent films of the custard pie-throwing era.

(5) *Sing a Song on Saturday* (RS)—On Saturday mornings, "Blinker," a pleasant appearing octopus-like cartoon character with white glove "legs," will introduce the featured children's recording of the week.

(6) *Morning in Moline* (10 percent entertainment) and *It's Your Town* (5 percent entertainment) will also present entertainment features.

(7) Many recorded film entertainment programs directed toward adult and children audiences will be presented at varying times.

e. News (LS and LC):

At regular intervals each day of the week, Illiway will present news programs, 75 percent to 90 percent of which will be devoted to local news stories in which the viewer will be "taken" to news events. The station will rely, primarily, on its own news staff which will include three photographer-reporters. It is contemplated that about 20 percent of each newscast will make use of film shot by the staff. All news-

casts will be presented with an objective viewpoint. News will be presented with simplicity, directness, and brevity (but long enough to give complete details), combined with color, interest, and good taste. Weather will be presented regularly with visual aids.

(1) *Week in Review* (LC)—On Sunday at 12:15 p.m., Illiway will present a review of the news of the week. Film clips and photographs culled from those shot during the week will be used to recapitulate the recent happenings in the Quint Cities area. An on-camera personality will be seen briefly as the program is introduced and concluded. The accent will be on film, locally produced, supplemented with photographs.

f. Religious programs:

(1) *Hymns for Today* (RS)—On weekdays at 7:30 a.m., the station will present recorded music of all faiths. When applicable, an off-camera announcer will supply such information as news about specific holidays, birth dates of saints, etc.

(2) *Let Us Pray* (LS)—*Meditation* (LS)—On weekdays at 7:55 a.m. and with every closing, Illiway will present a 5-minute inspirational prayer or message delivered live from the studio by ministers, priests, and rabbis of the area. All denominations will be presented on a rotating basis.

(3) *Church Service Bulletin Board* (LS)—Illiway will present every Sunday morning a 10-minute program designed primarily to supply information of church services and activities.

(4) *Church Services* (LS)—On Sunday mornings at 10:30 a.m., Illiway will present a 1-hour live presentation of church services from its studio-theater. These services will be conducted by various denominations on a rotating basis. Of necessity, Illiway plans to do, on the average, one live remote per month from a Quint Cities house of worship.

(5) *TV Sunday School* (LS)—On Sundays at 10 a.m., Illiway will present a 15-minute program devoted to telling or presenting Bible stories or "lessons."

(6) *A Child's Prayer* (LS)—On Saturdays at 9:55 a.m., Illiway will present for its children's audience an appropriate prayer, short talk, or lesson by an area clergyman. Clergy will participate on a rotating basis.

(7) On Sunday mornings, Illiway will also present 45 minutes of recorded film religious programs.

g. Talk programs:

(1) *Program Preview* (LS)—At commencement of programing, Illiway will present a rundown on the day's programing.

(2) *Morning in Moline* (LC)—On weekdays at 8 a.m., Illiway will present a 1-hour "look or listen" program with the accent on information. A complete newscast will begin this 1-hour program. Particular emphasis will be placed upon happenings in the Quint Cities television coverage area. Featured in this first newscast will be complete reports on the opening quotations or estimates at the major cattle, hog, and sheep markets; grain market and opening stock market and commodities exchange quotes, as well as other pertinent information regarding said markets. Capsule newscasts will be scheduled at approximately 8:35 a.m. and again at 8:50 a.m. Bulletins on breaking news stories will be inserted as soon as received. Current weather information will be included in all newscasts. News film, stills, and slides will be used, as well as live interviews and discussions with those making the news, when and as available.

(3) *It's a Woman's World* (LC)—On weekdays at 11 a.m., Illiway will present a 50-minute program of wide variety with something of interest for all homemakers. Live entertainment would be included, organizations boasting choral units, music ensembles, or talented dramatists being invited to appear.

(4) *Quint-City Quotes* (LS)—Every weekday at 10:15 p.m., Illiway will present a 7-minute program consisting of locally produced sound-on-film interviews with citizens of the Quint Cities area. These interviews will

normally produce several answers reflecting the attitude of individuals toward international, national, and local problems and situations.

(5) *It's a Strike* (LC)—On Saturdays at 5 p.m., Illiway will present a bowling show originating live from the bowling alley located adjacent to its main studio.

(6) *Sports* (LC and LS)—At regular intervals during the week, sports results and news, especially of the area, will be presented. In addition, such news will be integrated into all newscasts not located near a regularly scheduled sportscast.

(7) *Topic for Today* (25 percent Talk), *Spotlight on Industry/Labor* (40 percent Talk), and *Community Life* (50 percent Talk) will also present talk features.

h. In addition to the regularly scheduled programs described above, Illiway will from time to time present special individual programs and special series of programs either in connection with regularly scheduled programs or in place of regularly scheduled programs. The exact type of program and its content will be decided after consultation with other persons in the community as these special programs are developed and produced. In addition, Illiway will create and present special series of broadcasts which may run anywhere from 2 times to 13 times, depending on the subject matter of the broadcasts. In this connection, particularly, programs dealing with civic activities, campaign issues, matters of controversial issue, and educational programs would be the subject of such special series.

Staff, studio, and equipment proposal

420. Illiway proposes a staff of 76 persons broken into the following groups:

Department	Number of personnel
General manager	1
Administration	10
Sales	5
Technical	22
Program	38
Total	76

The position of general manager will be filled by Baisch and station manager by Mazzie. Included on the staff are an educational-public service director, a women's director, a farm director, a news director, and a sports director. In addition to the staff of 76 referred to above, individual stockholders, officers, and directors will participate in the day-to-day affairs of the station as indicated hereinbefore. Competent personnel will be available to fill Illiway's staff positions.

421. The engineering and studio operational personnel shown in the work schedules submitted during the hearing are adequate to produce, with adequate rehearsal, the programs proposed by Illiway and adequate plans have been made for duty assignments of personnel in these categories.

422. The technical equipment proposed by Illiway is adequate and available to produce the Illiway proposed program schedule. Two studio cameras are proposed for the Moline studio and two field cameras will be in use at the Bettendorf studio. Film processing services are available in the Quint Cities for the processing of locally

produced film. The two field cameras, together with complete remote equipment, would be used for live remote programs.

423. Illiway submitted detailed studio plans, which were developed by one of its stockholders, Melvin Beckstrom, an architect especially qualified in such work. Mazzie, Baisch, Engdahl, Bettendorf, and Boeve also provided assistance and criticism in the location of the studio and in the studio planning. On the basis of the record, it is clear that the proposed Illiway studios are fully adequate to produce its proposed programs. Ample provision has been made for parking. The main studio of Illiway will be located in downtown Moline readily accessible to the public, by public and private transportation from all parts of the Quint Cities.

424. The directors and stockholders of Illiway have set a policy that the station should serve the special needs of Bettendorf. In connection with the policy, Illiway proposes to maintain an auxiliary studio in Bettendorf to help identify the station with Bettendorf and to make it unnecessary for the people of Bettendorf, particularly children, to have to travel across the river toll bridge in connection with Bettendorf television programs, or to a Davenport station which would be even farther away. The Bettendorf Co. has suitable facilities available for an auxiliary studio. The location is suitable for farm demonstrations.

The overlap issue

425. The Davenport-Rock Island-Moline and the Rockford standard metropolitan areas are separate and distinct areas and are not immediately adjacent, or located in the same general area. At the closest point the two areas are approximately 54 miles apart, and the transmitter sites of Illiway and WREX-TV are 90 miles apart. The cities of Moline and Rockford are also about 90 miles apart.

426. The proposed Illiway operation predicted grade A population is 503,320 in an area of 6,050 square miles; the predicted grade B contour encompasses a population of 968,100 and an area of 11,780 square miles. For WREX-TV, the grade A contour encompasses a population of 452,800 and an area of 4,780 square miles; the grade B contour covers a population of 876,600 and an area of 9,780 square miles. The contours of the stations overlap; there is, however, no overlap of the grade A contour.

427. Considering first the overlap of the two grade B contours, the population in this area is 91,800 and the area is 1,390 square miles. The 91,800 population is 10.5 percent ($91,800/876,600$) of the population in the WREX-TV grade B contour, and 9.5 percent ($91,800/968,100$) of the population in the proposed Illiway Television, Inc., grade B contour. The 1,390 square miles in this overlap area is 14.2 percent ($1,390/9,780$) of the area in the WREX-TV grade B contour, and 11.8 percent ($1,390/11,780$) of the area inside of the proposed Illiway Television, Inc., grade B contour. The population in the area where the WREX-TV grade A contour and the proposed Illiway Television, Inc., grade B contour overlap is 28,100 and the area is 320 square miles. This population is 6.2 percent ($28,100/452,800$) of the population within the WREX-TV grade A contour; the area is 6.7 percent

(320/4,780) of the area within the WREX-TV grade A contour. The population in the area where the Illiway Television, Inc., grade A contour and the WREX-TV grade B contour overlap is 11,300 and the area is 280 square miles. This population is 2.2 percent (11,300/503,320) of the population within the proposed Illiway Television, Inc., grade A contour; the area is 4.6 percent (280/6,050) of the area in the proposed Illiway Television, Inc., grade A contour. The grade A contours do not overlap.

428. In the light of the foregoing, it is clear that no violation of section 3.636(a)(1) of the rules is involved in this case. That section is not applicable in this case because neither Illiway nor the persons controlling it or its individual stockholders, directly or indirectly, own, operate, or control WREX-TV, and neither the licensee of WREX-TV, the persons controlling it, or its individual stockholders control Illiway. The only common ownership is with Baisch and Guyer who control neither corporation and are only minority stockholders in each. Since this section of the rule is concerned solely with mutual ownership or mutual control, it is not applicable here. Moreover, in light of the small amount of overlap involved, without any overlap of the grade A contours, it is clear that no situation is presented here where two broadcast stations serve substantially the same area in violation of the rule. (See *The Enterprise Co.*, 9 R.R. 77, 82; *WGAL, Inc.*, 9 R.R. 110, 116; *National Broadcasting Co., Inc.*, 13 R.R. 374, 379; *Ohio Valley Broadcasting Corp.*, 15 R.R. 41.) At any event, the grant of the Illiway application would not involve any possible violation of the rule since Baisch and Guyer, the only persons owning stock in WREX-TV, will sell any stock they may own in that station and they and Mazzie will sever all connection with WREX-TV if Illiway receives a grant. No interrelationship between the stations would exist after Illiway receives a grant.

Moline Television Corp.

429. Moline Television Corp. is a Delaware corporation, authorized to do business in Illinois. It has 5,000 authorized common shares of \$100 par value, each share having 1 vote. Of these 5,000 shares, 100 have been issued and an additional 3,900 have been subscribed. The list of individuals who have subscribed to the stock of the corporation who own stock in it, and their respective holdings, is shown below. Also indicated are those individuals who are officers of the corporation. All stockholders are directors.

Name and residence	Office held	Number shares		Percent of voting stock
		Now held	Subscribed	
Frank P. Schreiber, 225 Maplewood, Riverside, Ill.	President.....	10	380	10
Francis J. Coyle, 3100 Coaltown Rd., Moline, Ill.	Chairman of board....	1234	4674	1234
Charles G. Agnew, 2000 6th St., East Moline, Ill.	Vice president.....	5	195	5
Victor B. Day, 2803 23 1/4 Ave., Rock Island, Ill.	.....do.....	10	380	10
L. S. Heltrich, 2517 12th St., Moline, Ill.	.....do.....	5	195	5

Name and residence	Office held	Number shares		Percent of voting stock
		Now held	Subscribed	
Richard Stengel, 2301 29½ St., Rock Island, Ill.	Vice president.....	9	351	9
Samuel M. Gilman, 2417 21st Ave., Rock Island, Ill.	Secretary-treasurer....	5	195	5
Calvin Ainsworth, 1187 27th St., Moline, Ill.	1	30	1
Meredith H. Davis, Alledo, Ill.	¾	19½	¾
William J. Dowsett, 706 20th Ave., East Moline, Ill.	1	30	1
Robert M. Harper, 777 20th Ave., East Moline, Ill.	1	30	1
George C. Hebel, Alledo, Ill.	¾	19½	¾
William T. Leonard, 1204 16½ St., Bettendorf, Iowa.	¾	19½	¾
Harry McLaughlin, 3342 9th Ave., Moline, Ill.	5	195	5
David Parson, 618 Michigan, Evanston, Ill.	10	200	10
Kenneth F. Peterson, 3442 19th St., Moline, Ill.	¾	19½	¾
Charles G. Rehling, 707½ Jones, Bettendorf, Iowa.	¾	19½	¾
Philip Strick, 2626 Scott St., Davenport, Iowa.	2½	97½	2½
Thomas M. Thomas, 221 Ridge Rd., Lake Forest, Ill.	5	195	5
Paul M. Versluis, 2312 12th St., East Moline, Ill.	5	195	5
Richard Waxenberg, 306 West Dover Ct., Davenport, Iowa.	5	195	5
George Young, 2809 22d St., Moline, Ill.	4	195	4
Glen E. Perkins, 1428 40th Ave., Rock Island, Ill.	1½	58½	1½

Employee stock plan

430. In the event of a grant, Moline Television Corp. will make available 250 shares of stock for purchase by key employees, such as the director of education and public affairs and assistant manager, program manager, chief engineer, etc. This stock will be made available for purchase by these employees at book value, including goodwill at \$1. The company will retain the right to purchase said stock on the same terms when employment of such key executives is terminated, thus keeping said stock available for ownership by key employees of the company.

The committee setup of Moline Television Corp.

431. The everyday management of the corporation will be in the hands of an executive committee composed of Messrs. Schreiber, Coyle, Day, Stengel, Parson, and Waxenberg, representing a total stock ownership of 56.5 percent. Other stockholders will devote themselves to particular areas of station operation through committees as follows: Program committee consisting of Messrs. Gilman, Ainsworth, and Davis; commercial standards committee consisting of Messrs. Leonard, Day, Helfrich, and Rehling; religious committee consisting of Messrs. Dowsett, Sitrick, and Peterson; and the house and maintenance committee consisting of Messrs. Perkins and Versluis. In addition, the program committee will include members of the communities served by the proposed station who have been outstanding in the activities of the community. It will be the pur-

pose of such joint station-community relationship to reflect the changing and various needs of the community.

Principals of Moline Television Corp.

432. *Frank Schreiber* was born December 3, 1901, at Chicago, Ill. He began his experience in news dissemination in 1918 when he became a "stringer" and part-time office employee of the Chicago Tribune. He progressed through various departments of that newspaper and in 1931 became public relations director of WGN, Inc., owned by the Chicago Tribune, and coordinated the station's activities with the Mutual network, which WGN helped to establish. Beginning in 1941 he served in various executive capacities with WGN. He was the general manager of WGN AM-TV for about 15 years, and in that capacity guided the development of the television station from its very infancy.¹⁷ In addition to his connection with WGN, Mr. Schreiber was a director of WPIX, Inc., operator of WPIX-TV, New York City, and a director of the Mutual Broadcasting System. Mr. Schreiber has agreed to move and become a resident of Moline upon the grant of a construction permit to Moline Television Corp. He will devote all of his time to the management of the proposed television station.

433. *Francis J. Coyle* was born November 29, 1899, in Moline, Ill., and has been a resident of that city since. He is chairman of the board of Moline Television Corp. He attended Moline public schools, and St. Ambrose College, Davenport, Iowa, and received his LL.B. from the University of Detroit in 1926. While at college, he was active in varsity football, basketball, and baseball. At the present time, Mr. Coyle is a member of the law firm of Coyle, Stengel & Gilman, Rock Island, Ill. He has served as a member of the Illinois House of Representatives and as circuit judge of the 14th Judicial District of Illinois which encompasses Henry, Mercer, Whiteside, and Rock Island Counties. He has also served as assistant State's attorney for Rock Island County and is a commissioner of the Metropolitan Airport Authority of Moline. Among his other business enterprises are the Harms Hotel, Rock Island, Ill.; the Cities Water Co., Royalton, Ill.; the Midwest Zesto Corp. and Pioneer Transport, Inc., of which he is a secretary. Mr. Coyle belongs to numerous civic and religious organizations in the area.

434. *Charles G. Agnew* was born on August 8, 1914, in Mason City, Ill. He has been a registered pharmacist for over 20 years. He owns and operates the Agnew Drug & Camera Store and the Agnew Bike & Hobby Shop, both in East Moline. He is a member of numerous professional pharmaceutical associations and during World War II was a member of the Rock Island County Rent Control Board. He has served on the East Moline Board of Education for two terms. In

¹⁷ On Feb. 18, 1952, the Federal Communications Commission sent out a form letter to 28 out of the 108 then operating television stations, inquiring as to the percentage of time devoted to various programming categories, as then defined. WGN-TV received such a letter because its application for renewal of license indicated that the station carried no religion or agriculture during its composite week. After the station replied, explaining the circumstances, that it did carry such programs at times other than the composite week, the license of the station was renewed without further questions. Mr. Schreiber was not a stockholder in WGN, Inc., the licensee of WGN-TV, but was a director and officer of that corporation.

addition, he belongs to numerous social and civic organizations in the area. Mr. Agnew helped finance a private survey for the location of a bridge across the Mississippi River. In 1950 he helped underwrite the Western Open Golf Tournament, and he participated in its coverage by WOC-TV. Mr. Agnew has had experience in covering live events and motion picture productions. His firm has been engaged for the past several years in filming high school football games for the board of education. He has also personally filmed Iowa University basketball for a local television station. His firm has also prepared a half-hour sound film covering the entire Dairy Queen (confectionery) operation. Station WOC-TV, Davenport, has during the past 8 years on numerous occasions used high school football film which he personally shot on its sports program, and in 1956 it requested him to film the NCAA basketball tournament at Evanston, Ind., where he personally shot the semifinal and the final games.

435. *Victor B. Day* was born in Davenport, Iowa, on February 3, 1905, and has since been a resident of the Quad City area except for a period of 1929 to 1936 when he resided in Chicago. He is a graduate pharmacist and was employed by Liggett's Drug Co. in Chicago for a number of years. Upon his return to the Quad City area in 1936, he became associated with the Bear Manufacturing Co., of which he has been president since 1953. The Bear Manufacturing Co. is a nationwide distributor of equipment and is the largest manufacturer of auto alignment equipment in the country. He belongs to many organizations and is at the present time metropolitan airport commissioner. He served as a president of the Rock Island Chamber of Commerce and other civic organizations.

436. *Dr. L. S. Helfrich* was born October 28, 1910, in Carthage, Ill. He is a practicing surgeon residing in Moline. He has served as an instructor in the Department of Surgery and the Department of Pharmacology at the University of Illinois, College of Medicine. Following graduate work in surgery at Illinois Research Hospital, he served 33 months in the Medical Corps, U.S. Army, attached to 111th Evacuation Hospital in the European theater, where he received the Bronze Star for his services. He is a member of the American Board of Surgery and of the American College of Surgeons. He has served as president of the staff of Moline Public Hospital and as a member of the executive board of the Moline Lutheran Hospital. He is the president of the Midwest Surgical Association and has been a member of the Moline Rotary Club and the committee of development of the Moline YMCA. He is chairman of the Nurse's Scholarship Committee and is also a member of the Moline Association of Commerce. He has been for several years a member of the Citizens' Advisory Committee which was active in arousing public opinion to secure the passage of a proposal authorizing changes in the school curriculum and the construction of a new high school. He is retained as surgeon in charge of the medical department of East Moline International Harvester Works which employs over 3,000 people. It is the duty of the medical department to handle emergencies and industrial accidents, and to supervise the activities promoting industrial safety.

437. *Richard Stengel* was born on September 17, 1914, in Rock Island, Ill., and has been a resident of that community most of his life. He is a practicing attorney in the firm of Coyle, Stengel & Gilman. He is a director of the Rock Island Sand & Gravel Co., Rock Island. Following his graduation from law school, he served on the staff of the Alien Property Custodian, Department of Justice, and then served in the U.S. Navy. Upon his return from the service, he entered the practice of law and served as an assistant U.S. attorney for the Southern District of Illinois from 1945 to 1948. In 1948 he was elected to the Illinois General Assembly and served four consecutive terms. In 1956 he was the Democratic nominee for the U.S. Senate for the State of Illinois. During his term as a State legislator, he received the Illinois Legislative Correspondents' award as the outstanding legislator in 1953 and 1955. He is a member of the Masons, Shrine, Eagles, Elks, American Legion, and other civic and professional organizations. He is also a member of the board of trustees of Broadway Presbyterian Church and served as a fundraising chairman of the 1957 Muscular Dystrophy Campaign. In 1957 he was appointed for a 4-year term as a member of the Illinois Commission on Higher Education. The commission meets monthly and is required to submit an annual written report to the Governor of the State. Mr. Stengel is at the present time the chairman of the subcommittee which is working on the determination of the need for another medical school for southern Illinois.

438. *Samuel M. Gilman* was born on December 24, 1920, in Davenport, Iowa, and except for the time spent in school and military service, has resided in the Davenport and Rock Island area. He is a graduate of the University of Chicago, Harvard Law School, and is a member of the law firm of Coyle, Stengel & Gilman. He is a member of the American, Illinois, and Rock Island County Bar Associations; a director of Citizens for Good Government; director and past treasurer of the Rock Island Community Chest; a trustee of United Jewish Charities of Rock Island County; past president of B'nai B'rith; and a member of the Elks, American Legion, and chamber of commerce.

439. *Calvin Ainsworth* was born in Moline, Ill., on September 5, 1916. He has been a lifelong resident of that area. He attended public schools in Moline and the University of Iowa and Augustana College. From 1939 to 1940 he was employed as a special agent by New York Life Insurance Co. From 1940 to 1951 he was a partner in Moline Hardware Co., Moline, Ill., except for a period of military service, and since 1951 has served as resident manager of the firm of Stifel, Nicolaus & Co., Inc. His most recent civic activities include membership in Moline Chamber of Commerce where he served as treasurer from 1955 to 1957; membership and former presidency of The Playcrafters, a Quad City little theater group; directorship of the Moline chapter, American Red Cross; cochairmanship of the Moline Red Cross Campaign Fund; and membership on the Moline School Board. In addition, Mr. Ainsworth belongs to such civic and social organizations as the YMCA, Elks, American Legion, Izaak Walton League, etc.

440. *Meredith H. Davis* was born at Aledo, Ill., on May 11, 1905, and has resided there since. He attended the University of Illinois and the John Marshall Law School. Mr. Davis has been engaged in the private practice of law since 1929. He also maintains an insurance business and conducts real estate affairs. He has served two terms as master in chancery of the Circuit Court of Mercer County and has acted as assistant State's attorney for that county. He belongs to local civic and religious organizations and has been a longtime president of Mercer County Infantile Paralysis Society.

441. *William J. Dowsett* was born on June 25, 1918, in Rock Island, Ill. He resides at the present time in East Moline. He is president of the East Moline Metal Products Co., which he founded. This organization manufactures metal products and employs between 40 and 45 employees. He is self-educated, starting out as a machinist. Mr. Dowsett has been active in the East Moline Association of Commerce and has served as a member of its board of directors for 3 years. When the city of East Moline observed its Golden Jubilee Celebration he was elected chairman. In 1954 he served as chairman of the river filtration plan. He is active in the affairs of the Catholic Church and has been awarded the Legion of Honor Award for his activities. He is secretary of the executive board of the Rock Island Deanery of the National Council of Catholic Men. In addition to these organizations, Mr. Dowsett belongs to numerous social, civic, and religious activities in the area.

442. *Robert M. Harper* was born on December 17, 1891, in Monmouth, Ill., and has resided in East Moline since 1913. He is secretary-treasurer, director, and majority stockholder of the Herald Printing & Publishing Co., East Moline, which publishes the East Moline Herald, a weekly publication with a total circulation of 7,200. In 1934 he was elected State senator from the 33d district. He has also served as the employers' representative on the first board of review of the Illinois Unemployment Compensation Commission, and for the period 1940-41 served as a commissioner of the Illinois Commerce Commission. During the war he served as the director of the western and northern Illinois and eastern Iowa district of the Office of Price Administration. Among his civic activities are the past presidency of the local Rotary Club; post commandership of East Moline Post, American Legion; presidency of East Moline Citizens for Good Government and other local civic organizations.

443. *George C. Hebel* was born in Aledo, Ill., on December 13, 1906, and has since been a resident thereof. At the present time he is the judge of the 14th Judicial Circuit of Illinois, the highest court of original jurisdiction in the State. Prior to his election to the bench, he served for 7 years as State's attorney for Mercer County and for 9 years as city attorney for Aledo, Ill. He received his B.A. degree from Washington & Jefferson College, Washington, Pa., and has served on the staffs of the English departments in the University of Oklahoma and the University of Colorado. In 1938 he received his J.D. from the Chicago Kent College of Law where he served as editor of the Law Review. For 7 years he served as a member of the Selective Service Advisory Board and for 3 years as

Government appeal agent for the Selective Service System. He served for 2 years as chairman of the Mercer County Bond Drives and belongs to other civic, social, and religious organizations. He is a member of the advisory council of the U.S. Rivers & Harbors Congress and a member of the drainage and levee law section of the Illinois Bar Association. Aside from his legal activities, Mr. Hebel is an Illinois farmer. He manages eight farms with more than 1,000 acres of land.

444. *William T. Leonard* was born on April 13, 1925, in Moline, Ill. He is now a resident of Bettendorf, Iowa. He has been a lifetime resident of the area, except for a period of military service and employment. He graduated from the University of Iowa in 1949 in journalism-advertising. He was employed in the advertising department of the Davenport Democrat from 1949 to 1951, and later by the land acquisition department of the Stanford Oil Co., Evansville, Ind. Between 1954 and 1956, he was employed by the King Korn Stamp Co., and since 1957 has owned and operated his own advertising agency in Davenport.

445. *Harry McLaughlin* was born in St. Louis, Mo., on February 17, 1897, and has resided in Moline, Ill., since 1926. He learned the trade of patternmaker and draftsman and worked as such for the E. H. Wilson Co., Moline, Ill., until 1932 when he formed the McLaughlin Body Co., Moline, Ill., of which he is the president, director, and majority stockholder. The McLaughlin Body Co. manufactures truck cabs and bodies for International Harvester and Diamond-T Motor Car Co. The organization started out with 10 employees and now employs over 200 people, and his annual volume of business is in excess of \$4 million. Mr. McLaughlin is also president, director, and principal stockholder of the McLaughlin Machine Co., Moline, Ill., rebuilders of Army tanks. He is also vice president, director, and stockholder of McLaughlin Realty Co. This company is a family-owned organization and owns business and commercial property in Moline. Mr. McLaughlin has been active in fundraising campaigns for various religious and civic organizations.

446. *David Parson* was born on February 26, 1924, in Dubuque, Iowa. He currently resides in Chicago, Ill. Mr. Parson was educated at Loras College, Dubuque, Iowa, from which he graduated maxima cum laude. He was employed on a regular basis from 1941 to 1944 as an announcer on radio station WDBQ (then WKBB), Dubuque, Iowa, and during that period of time produced and announced every type of program including man-on-the-street interviews. He received his J.D. from the University of Chicago in 1947 and while there he was a member of the editorial board of the Law Review and president of the Hillel Foundation. Since 1947 he has been engaged in the general practice of law with the firm of Kirkland, Ellis, Hodson, Chaffetz & Masters. He is a vice president and stockholder of the WPM Realty Corp., Indianapolis, Ind., and a director and general counsel of J. P. Michael Co., Indianapolis, a wholesale grocery company over 75 years old. During the period 1948 to 1955, he represented WGN, Inc., in all phases of radio, television, and business law. His civic activities include membership in

the B'nai B'rith, the lawyers division of the Chicago Council of Boy Scouts, and other social, civic, and religious activities. Mr. Parson's family resides in Rock Island, and he visits the city frequently.

447. *Kenneth F. Peterson* was born on August 27, 1910, in Moline and has been a lifelong resident of that city. He served on the Moline Board of Education for 6 years and was president of the board of education for the school year 1956-57. He attended Moline public schools and Augustana College from which he graduated in 1935. He is engaged in the general construction business by virtue of his ownership of one-third of the capital stock of C. E. Peterson Sons Co., Moline, Ill., of which he is vice president, treasurer, and general superintendent. In addition to his construction business, he is a one-third owner of a farm in Rock Island County. The C. E. Peterson Sons Co. has been in business since 1913 and has constructed such buildings as the Augustana Theological Seminary, the First Christian Church in East Moline, the Cambridge High School addition, etc. He is a member of numerous fraternal organizations such as the Elks and Kiwanis, but has devoted most of his time to the problems of youth and education.

448. *Charles G. Rehling* was born on August 31, 1921, in Davenport, Iowa, and is now a resident of Bettendorf, Iowa. He graduated from the University of Iowa and received his J.D. from that university in 1947. While at the university, he was a member of station WSUI where he was in charge of sports and news and personally announced and covered the Big 10 and Navy Seahawks football games. He is presently a member of the law firm of Doerr, Dower & Rehling, Davenport, Iowa. He served as judge of the Seventh Judicial District of Iowa from 1955 to 1957. He was county attorney for Scott County from 1953 to 1955, and prior to that served for 5 years as assistant county attorney. In addition to membership in local civic, social, and religious organizations, he is a member of the board of Friendly House which is devoted to providing recreational activities for underprivileged children. As a member of the judiciary committee of the Iowa State Bar Association, he recommended the adoption of the ABA proposal for judicial reform. He is a member of the Mississippi Valley Fair Board.

449. *Philip Sitrick* was born on June 13, 1893, in Czarist Russia and has been a citizen of the United States since 1916. When he came to this country, he opened up a small corner grocery store which he operated until he entered the life insurance business in 1923. At the present time, he owns his own insurance agency. He has devoted much time to the needs and activities of the Jewish community in the area. He is a member of Temple Emanuel (Reformed), Tri-City Jewish Center (Conservative), and the B'nai Ameth Synagogue (Orthodox). In addition to these religious organizations, he is a member of various social and civic organizations in the area.

450. *Thomas M. Thomas* was born on December 18, 1912, in Chicago, Ill., and is at the present time a resident of Lake Forest, Ill. He is a practicing attorney and is connected with the law firm of Kirkland, Ellis, Hodson, Chaffetz & Masters. Among his civic activities are the Chicago Council Boy Scouts of America and the Old Town Boys'

Club. He is special counsel for the board of education of the city of Chicago, Metropolitan Sanitary District of Greater Chicago, Chicago Park District, and counsel for the Metropolitan Fair and Exposition Authority of Cook County, Ill. Mr. Thomas is a member of social, professional, and civic organizations. He has been accepted as a member of the applicant corporation upon the recommendation given to him by Mr. Parson.

451. *Paul M. Versluis* was born on March 13, 1899, in Ghent, Belgium, and came to this country with his parents in 1904. He attended Sacred Heart School, Moline, Ill., and graduated from the eighth grade in 1913. He started working when he was 16 years old on the C.B. & Q. Railroad as a car checker. He then drove a truck for the Moline Plow Co. and later for Deere & Co. in Moline. He became a car tester for the now defunct Velie Motor Co. From 1920 to 1925 he was construction superintendent for Bjorndahl Construction Co., and in 1933 became maintenance supervisor for the Illinois State Highway Division. Since 1927 he has owned the Versluis Lumber & Supply Co. and is engaged in the development of subdivisions and construction of residential homes. He is president and 48-percent stockholder of the Versluis Home Development Corp. of East Moline and a stockholder in the State Bank of East Moline, Ill. Mr. Versluis has been active in the affairs of the Belgian Catholic Church in East Moline.

452. *Richard Waxenberg* was born in Davenport, Iowa, graduated from the public schools there, and attended St. Ambrose College. He lived in Dubuque, Iowa, for several years and returned to Davenport in 1946. He presently resides in Rock Island, Ill. Mr. Waxenberg's family has been in the grocery business for the past 70 years. His first venture in the supermarket business was in 1938. Now he is president of Eagle United, Inc., which operates 28 supermarkets in Iowa and Illinois and employs approximately 1,500 people. Mr. Waxenberg is active in local social, civic, and religious organizations, and has been active in various fundraising campaigns for the charitable and religious organizations of which he is a member.

453. *George Young* was born on December 16, 1902, in Cincinnati, Ohio. He is a resident of Moline, Ill., and has lived in the area for over 30 years. He has played professional baseball and since 1937 has been the general agent for the United States Fidelity & Guaranty Co. at Moline. He is a member of various civic, social, and religious organizations in the Tri-City area. In addition to these, he is a member of the Rock Island Arsenal Golf Club and the captain of the Velie Cup.

454. *Glen E. Perkins* was born on November 26, 1918, in Forrest, Ill. He is now a resident of Rock Island, Ill., and has resided in the area for the past 12 years. At the age of 19, after graduating from the Chatsworth Township High School, he began to work as a construction foreman for the F. C. Shons Co., Freeport, Ill., and during the next 10 years held similar positions with various building concerns. In 1946 he organized and became half-owner of the Quad-City Construction Co. of Rock Island, which is engaged in the highway construction business. He is half-owner of the Quad-City Equipment Co. of Rock Island which is engaged in the exploitation of an im-

proved model of slip form paver. He has participated in various civic organizations of the area in which he lives. He was a member of Port Byron High School Board and now belongs to various civic, social, and religious organizations.

The creation of Moline Television Corp. and the preparation of its proposals

455. Channel 8 was assigned to the Rock Island-Moline-Davenport area in February of 1957. The interest of Moline Television's stockholders in channel 8 antedated the Commission's final assignment of that channel to the area. Sometime prior to February 1957, Judge Coyle discussed the possibility for applying for channel 8 with his friend, Ray Cundy, and was impressed with the possibility of an operation on that facility. Prior to the Commission's rulemaking proceeding which looked toward the allocation of channel 8 to the area, Dave Parson had been interested in that facility because his family lived in Rock Island, and he had visited the Quad City area at least once a month for the past 17 years.

456. After the Commission's allocation became final, Mr. Parson discussed the feasibility of an operation on this channel with Frank Schreiber and Sam Gilman. Richard Stengel, another stockholder in Moline Television, had known Frank Schreiber since 1951 when Mr. Stengel as a member of the State legislature had investigated the need for and sponsored legislation to compel the University of Illinois to make its football games available for television. Mr. Stengel discussed the possibility of applying for a television station with Dave Parson and Frank Schreiber in July of 1956, and when the Commission did, in fact, allocate channel 8, Mr. Stengel conducted a survey of the two existing stations from a business point of view to determine whether a third station had a reasonable chance of success in that market. As a result of that investigation, Messrs. Stengel, Parson, and Gilman decided that if an organization could be formed having a proper representation of the various business, civic, and charitable activities in the Quad City area and if experienced management could be assured, an application should be filed for channel 8. They discussed this with Judge Coyle and then decided to contact other members of the community to join them in the application. Judge Coyle contacted such stockholders as Mr. McLaughlin, Mr. Versluis, Mr. Agnew, Mr. Young, Mr. Peterson, Mr. Waxenberg, Mr. Leonard, and Mr. Harper. Other stockholders were approached by Mr. Stengel; e.g., Mr. Day and Mr. Ainsworth.

457. Moline Television Corp. was formally incorporated on October 10, 1957. Prior to that time, however, Sam Gilman, Richard Stengel, and Judge Coyle personally discussed from time to time the various aspects of the proposed station with each of the prospective stockholders of the corporation. These stockholders expressed their views and ideas about the proposed operation, and the three exchanged ideas among themselves. In addition, individual stockholders discussed the affairs of the proposed operation among themselves. Similarly, stockholders met and discussed the problems of the operation with Mr. Schreiber as early as the middle of the summer of 1957.

Out of these discussions and others, both formal and informal, emerged the program structure and policy of Moline Television Corp. Various individuals, to the extent indicated, participated in the creation and formulation of these proposals and of that policy:

(a) *Frank Schreiber* contributed his knowledge of broadcasting, his experience with particular programs and format, and evaluated the feasibility of such programs as far as their presentation on the proposed operation. Many programs with which he was familiar from the WGN operation were translated into the proposed Moline Television operation. In the course of the preparation of the instant proposal, Mr. Schreiber made at least 15 visits to Rock Island.

(b) *Francis Coyle*.—In addition to his civic activities, Mr. Coyle's experience as a circuit judge during which time he was riding the circuit impressed him with the necessity of treating the problems of the area on an areawide, unified approach rather than a piecemeal basis. It is this knowledge of the area which has later been translated into the policy of Moline Television Corp.

(c) *Charles Agnew* operates a drug and camera store and a hobby shop. He has recommended that the station carry a monthly program devoted to photography fans in cooperation with local camera clubs. From his experience in the filming of games for various schools in the area, he has also ascertained the availability of satisfactory facilities for the rapid developing of film. The program "Highway to Health" featuring organizations devoted to furthering the public's physical well-being was put into Moline Television Corp.'s schedule as a result of conversations between Mr. Schreiber and Mr. Agnew. In the forming of Moline Television Corp.'s policy, Mr. Agnew was concerned with the policing of drug advertising and urged subscription to FTC releases.

(d) *Victor B. Day* has been active in the affairs of the Blackhawk Industrial Promotion Association which was conceived as a Moline development organization but subsequently developed as an areawide group. In line with this spirit, he has advocated and approved the policy which has been evolved by the members of the corporation to the effect that the proposed station will be a Quad City station. Furthermore, as a result of Mr. Day's training as a graduate pharmacist, he has suggested the creation of a commercial standards committee which would be responsible for the exercise of close supervision over commercial continuity, particularly in the field of medical and personal drug advertising. There is no better business bureau in the Moline area, and it is his opinion that the lack of such agency places an extra responsibility upon the advertising media to protect the public. Mr. Day is the president of Bear Manufacturing Co. which operates the Bear Automotive Safety Service School devoted to the training of technicians in the operation and maintenance of automotive safety equipment. The school is an accredited vocational institution with instructors accredited by the Illinois Department of Education. While the school is primarily operated for the benefit of owners of Bear equipment, it is also available to any person who wishes to prepare himself for this particular trade, and vocational instructors from accredited institutions are trained without tuition

charge. In view of his experience with automotive safety, Mr. Day has stated that he believes that the station should use a series of visual announcements showing the results of careless driving and that these announcements should be used to promote and continue safety programs which can be coordinated with the efforts of all local agencies concerned with this problem.

(e) *L. S. Helfrich*.—As shown in his biography, Dr. Helfrich is a practicing physician and surgeon. His work includes the position of surgeon in charge of the medical department of the East Moline International Harvester Works. One of his duties is the submission of reports designed to reduce the industrial accident rate. From this activity he knows that there is a need for a program of industrial safety which could be instrumental in minimizing deaths and injuries. In view of his interest and activities in this field, he knew that such an effort by the station would receive the support of both industry and labor. He also suggested that such a campaign be keyed to create maximum impact on the weekend, since Monday is the day when workers are most accident prone. He has also suggested that this campaign of industrial safety could be coordinated with farm safety, since one of the prime industries of the area is the manufacture of agriculture machinery. His position as a surgeon and member of various medical societies has led him to serve on the commercial standards committee, since he is particularly interested with the identity of the medical profession with the sponsorship of commercial products, which involves not only the problem of misrepresentation of doctors by nonmembers of the profession, but also the endorsement of products by individual practitioners in a manner which would imply that the profession as a whole has approved the product or service.

(f) *Richard Stengel*.—As previously pointed out, Mr. Stengel conducted a financial survey of the existing television stations in the area. Mr. Stengel has appeared on a series of television programs. He was one of the individuals through whom the ideas of the stockholders were transmitted and coordinated. He has frequently appeared on television.

(g) *Samuel M. Gilman* is a member of various civic, social, and religious organizations in the area. As a result of his civic activities and a lifetime of residence in the area, he has been aware of the fact that the area comprising Rock Island, Davenport, Moline, East Moline, Bettendorf, Milan, and Silvis is badly divided among competing jurisdictions, which competition often causes a mutual loss to the cities involved. It was this knowledge that led him to include among the stockholders of the organization persons from the various areas to be serviced by the proposed station. His knowledge of the various organizations led him to the conclusion that the needs of these organizations change constantly, and since the station would not go on the air until some years later, no commitment could be made either by the corporation or the organizations as to the exact programming which would be most suitable for them when the station went on the air. Furthermore, from his own knowledge, he determined that repetitious contacts with the various organizations at this time would impose an unnecessary and unproductive burden upon the personnel of these

organizations. It was he, together with Dave Parson and Frank Schreiber, who participated in the drawing up of the program proposal as it was submitted to the Commission, and it was he who was responsible for the program descriptions and the statement of policy submitted in the hearing.

(h) *Calvin Ainsworth*.—One of Mr. Ainsworth's primary activities in recent years has been in the Red Cross to whose annual campaigns he has devoted much effort. These campaigns are limited to a month of active public solicitation, but their preparation extends for several months. It is his belief that publicity media could be effectively used on behalf of all chapters in a manner beyond the means of a single chapter.

He has discussed with other stockholders his thoughts about using the station as an areawide publicity medium. He also made the suggestion that insofar as the Red Cross is concerned, it did not appear wise to commit that organization to specific types of programs because in the interval of time between the preparation of the exhibits and the actual broadcasts, the needs of the organization would probably change considerably.

Mr. Ainsworth's civic activities led him to point out that Rock Island County is now divided into two distinct and separate areas for Red Cross activities, Rock Island and Moline, with each area conducting independent but coordinated campaigns for funds. On the other hand, the Scott County Red Cross Chapter, representing Davenport, is a member of the Scott County United Fund Campaign and does not conduct an independent campaign for funds as do the Moline and Rock Island chapters.

It is possible that one or both of the Rock Island County chapters will become members in the United Fund. If this change were to take place, the need of the Rock Island chapter for television time would be considerably different from what it is now. His membership in the Red Cross indicated to him that neither the Rock Island nor Moline chapters is presently equipped to produce live programs, but if regular time were available to them, talent could be secured to produce a limited number of high-quality programs.

Mr. Ainsworth's civic activities also made it clear to him the limitations which can be placed upon civic groups. He has been active for a number of years in The Playcrafters, a local little theater group. He believes that the talent within this group would be available for either dramatic or instructive programs. However, as an active member and former president of that group, he knows that it would be impossible for the members to sustain any extended series of programs. The members of The Playcrafters all participate strictly on a part-time basis, and there is a lack of both time and material for any ambitious dramatic series. He believes, though, that the people who are interested in the little theater activities could produce a series of programs valuable to the Red Cross.

As a member of The Playcrafters as well as an active participant in Red Cross activities, Mr. Ainsworth felt that it was undesirable to secure specific commitments from these organizations as a part of the present program plans because of the uncertainty with respect to

future timetables. Not only will the needs and desires of the organizations change during the interim period, but the personnel responsible for effectuating program plans will undoubtedly change considerably during the interim period, in his belief.

Similarly, the knowledge which Mr. Ainsworth has acquired as a result of the activities of Mrs. Ainsworth has led him to join with other directors in formulating a policy for the station that it shall be the policy of the station to provide time to civic organizations of the area on the same basis as would be provided to commercial sponsors who seem to benefit from repetition. This position is based upon the experience of Mrs. Ainsworth, who in 1957 was in charge of promotion for the junior board of the Tri-City Symphony which presented a series of music appreciation programs over WOC-TV. The series was discontinued because of lack of broadcast time. Last year Mrs. Ainsworth tried to arrange for the broadcast of a regular series of public service programs on behalf of the Moline Community Welfare Council which represents about 75 welfare agencies and which were to be produced in cooperation with the Rock Island Welfare Community Council. Upon the basis of three initial broadcasts the community council arranged for the production of an entire series covering child and family welfare, problems of senior citizens, etc., but it was not possible to secure from either television station in the area commitments for broadcast time, and as a result, the series had to be abandoned.

(i) *Meredith H. Davis* is a resident of a farm area in which there is keen public interest in agricultural fairs. He has recommended that whenever fairs, cattle sales, and shows take place, the station cover these activities by giving them publicity, filming some of them, or carrying some of them on a live basis. His own interest has been in highway safety, and he has recommended to the group that much time, both programwise and through spot announcements, be devoted to the promotion of safety among schoolchildren, the instilling of respect for school patrols, and the reminding of motorists of the schoolbus stop laws.

(j) *William J. Dowsett* has been a member of civic, social, and religious organizations in the area. Among those organizations was his service of chairman of the river filtration plan in 1954, for the adoption of which he personally led the fight. This activity and the growth of the area in East Moline has convinced him that any station which wants to do a good job of serving the public must concentrate on the desires of the people as those desires become important. He has so informed the other directors of the corporation.

(k) *Robert M. Harper* is a director and majority stockholder of the East Moline Herald, a weekly publication with a total circulation of 7,200 which he has been publishing for 33 years. By virtue of his association with the Herald, he has become aware of the changing needs of the area. Aside from the large increase of the new population, there has been a change in the activities in which this population participates. For example, for many years the East Moline Community Festival was an outstanding event in the area. Leading stars of the entertainment world came to the city and performed before

large throngs. That organization has now ceased to exist. Several years ago Frankie Laine appeared at the festival. Despite the drawing name of the performer, the attendance was disappointing and, as a result, additional money had to be raised to cover the deficit, and the entire project was abandoned. It is this kind of activity which has impressed upon Mr. Harper the changing needs and interests of the area, and he made his views known to his fellow stockholders during numerous get-togethers, both formal and informal. The policy of adopting editorial position originated with Mr. Harper.

(l) *George O. Hebel* has been active in civic organizations for a number of years. He has taken a keen interest in the problems of irrigation and drainage of the upper Mississippi area and has appeared before committees of the U.S. Congress testifying on the flood control problem. His activity in flood control and drainage has demonstrated to him the necessity for cooperation between various jurisdictions in a unified effort to control areawide problems. Mr. Hebel is an Illinois farmer managing over 1,000 acres divided into eight farms. In view of his experience with farming, Mr. Hebel has stated and made recommendations to the group that the proposed station place an emphasis on weather reports, that it should intersperse the day with weather announcements at intervals, and that the regular weather programs should devote themselves to the interpretation of the meaning of various phenomena as they are likely to affect the weather in the listening area. He has also stated that the noon news should include a complete summary of the morning's activities on the various exchanges, and the evening news should contain a summary of the number of heads of livestock that were received at various markets and forecasts by commission merchants of prospective runs of cattle. He has also recommended that the station should make time available to persons connected with various agricultural colleges to present a professional point of view on such subjects as feed mixture which, as he has learned from years of living among farmers and operating a farm, is an item of constant conversation and discussion among farmers. In addition, Mr. Hebel has recommended to the group, and passed upon the suitability of, the timing of the Saturday and Monday and Thursday evening programs devoted to farming.

(m) *William T. Leonard* is in the advertising business. From his knowledge of the business, he has become aware of the problem presented by the fact that high television rates often preclude local merchants from promoting their services and wares over that medium. He has, therefore, impressed upon the directors that the station should keep its local advertising rate as low as possible, consistent with the economic operation. He has recommended that the station furnish each advertiser with an affidavit of performance whenever any copy is carried on the air. This is reflected in the policy of the corporation. He has also advised that it would be advantageous for the station to prefilm on occasion certain portions of the program "The Missus Goes to Market." This recommendation is reflected in the proposal of the corporation.

(a) *Harry McLaughlin* impressed the directors with the need to serve all races, creeds, and religions.

(o) *David Parson's* interest, among others, is in traffic safety. In the discussions with the other directors, he proposed to make the station address itself to this problem by presenting filmed 1-minute spots of familiar intersections in the Quad City area as well as outlying towns where members of the local police force would point out the safety problems involved and deliver a short message on safety. Mr. Parson, when he represented WGN, developed an interest in the televising of courtroom proceedings, which in turn involved him with the provisions of canon 35 of the bar association. He has recommended that the station should attempt to secure a modification of canon 35, but other directors of the corporation, such as Judge Coyle, Judge Rehling, and Judge Hebel, have held contrary views and the corporation has not adopted a policy at the present time on this subject.

(p) *Kenneth F. Peterson* was president of the Moline Board of Education for the school year 1956-57 and served on the Moline Board of Education for a period of 6 years. From his knowledge of the problems of operation of the school board, he believes that the program for preschool children would definitely meet an existing need and that the board's policy of cooperating with all forms of public enlightenment would allow that board of education to cooperate actively with Moline Television Corp. Based on his experience with the board of education, he has approved of the program "Home and School" which would be a means of acquainting the public with the activities of the school, and he has recommended that such a program be adopted. Mr. Peterson's interest in youth has not been limited to its formal education. He has served on the board of directors for Junior Achievement of Rock Island County which helps in the training of "Junior Businessmen." Because of his interest in such youth, he would impress at all times the necessity for the promotion of safety among youth.

(q) *Charles G. Rehling* has been active in social, civic, and religious organizations of the area. He is a member of the Mississippi Valley Fair Board which conducts an annual fair, including horse, cattle, and livestock shows as well as activities devoted to 4-H Clubs and the Future Farmers of America. He has recommended that the 4-H Clubs and Future Farmers of America be utilized in the Saturday program entitled "Farmers of Tomorrow." As a former judge and county attorney, he has taken a great interest in juvenile delinquency since, in Iowa, juvenile cases are handled in the district court. He has, therefore, recommended that the station serve a public need by spotlighting the problem of juvenile delinquency on an areawide basis. As a judge, he has been concerned with the problem of televising court proceedings. It was his personal feeling that the televising of court proceedings should be governed by the provisions of canon 35 of the American Bar Association. While he wholeheartedly approved and recommended telecasting of public hearings and meetings, he does not consider court proceedings as falling within that category.

(r) *Philip Sitrick* has been active in Jewish religious and fraternal organizations. For many years he has belonged to the local Zionist organization and has been a member of its board. He was also chairman of the local United Jewish Appeal and the cochairman of the Israel Bond Drive. These activities have shown to him that no group remains static over the years and that the needs of these groups change with the passage of time. The fluctuation in the memberships and interests in the Zionist organization since the creation of the State of Israel, the increase in the nature of the Israel Bond Drive since the creation of the State of Israel and of the United Jewish Appeal have all convinced him of the necessity of publicizing the needs of these organizations and he has discussed these with the other stockholders. He has stated as a result of his experience in these groups that the station must help the various organizations in the area at the time the help is needed and not now when all that the group can do is make promises.

(s) *Paul M. Versluis* is a builder and contractor. When the Community Chest began in East Moline, Mr. Versluis was its first chairman. He is chairman of the building and grounds committee of the city of East Moline Park Board and was chairman at the time when the present Soule Stadium was constructed. As a developer, he has participated in the expansion of East Moline and is familiar with the conditions resulting from the rapid expansion of that community. As a result of these activities, he has come to realize that it is impossible to foretell the needs of any particular area for years to come. Therefore, he has recognized that the proposed station could not commit itself to any particular group or organization prior to receiving its construction permit. This recognition of constant change has also resulted from his membership in the Belgian Catholic Church where he has seen a change in the composition of the membership and the language in which the service is being conducted. As a result of his acquaintance with the real estate interests of the area, he has proposed programing during the annual Parade of Homes during which time the viewing public would become acquainted not only with the availability of various housing developments in the area but with such informative hints concerning building materials, the selection of a site, the Veterans' Administration's rules for financing, etc. He has been president of the East Moline Builders' Club for 12 years and recognizes that the program would definitely serve a public need.

(t) *Richard Waxenberg* is a member of social, civic, and religious organizations in the area. Having been active in a number of Jewish organizations and having been a responsible officer of both Orthodox and Reformed congregations, he believes that one of the greatest services that can be performed by a television station in the field of religion is the education of persons of all faiths in the beliefs and practices of other faiths. He has discussed these views with Mr. Dowsett as well as other members of the Board. The programing of Moline Television Corp. reflects these views; e.g. "Quint-Cities Church of the Air." From his experience in the supermarket business, which like broadcasting must be responsive to the changing public desires and needs, he has been convinced that the proposed television operation should

not make or accept irrevocable commitments and plans insofar as public organizations are concerned. He believes that if the television station is to be successful, it must be responsive to change, and it cannot be responsive to change if its thoughts and plans are frozen years in advance. The knowledge of supermarket operations was utilized in connection with the program, "The Missus Goes to Market," Mr. Schreiber having discussed with him the feasibility of such program. This program will be available for sponsorship to any advertiser.

(u) *Glen E. Perkins* is in the road construction business, and it is this business association which has made him aware of the rapidly expanding community in which he lives. He has discussed the problems raised by the expansion of the community with his fellow stockholders.

458. The stockholders of Moline Television Corp. were aware of the fact that other competing applicants in this proceeding would conduct, to a various extent, surveys of the area and seeking commitments from various public service organizations. These stockholders were of the opinion that, by virtue of their long residence in the area and their own activities in various civic, cultural, and charitable organizations, they themselves possessed knowledge of the area to assess its community needs. They also knew from their own activities that the needs of the area would probably change in the interim between planning and actual operation. However, upon recommendation of their then Washington counsel,²² they had initially agreed to conduct conversations with representatives of various local organizations in order to secure commitments from these individuals as to various programs. These conversations were held by Messrs. Schreiber and Stengel, who in turn transmitted the information which they secured to the other stockholders. After more than a dozen of such conversations, it became apparent to the directors that these public service individuals felt that the most opportune time for such arrangements would not be at that stage of their activities, but when the group was ready to go on the air. These public service individuals felt that the lapse of time would bring about many changes which could alter any plans that may have been made. Among the organizations whose representatives were visited were the Rock Island public schools, Moline public schools, Augustana College, St. Ambrose College, Marycrest College, Tri-City Symphony Orchestra, and the Civic Music Association.

459. This expressed feeling of public service organizations led to a decision by the group not to conduct any further conversations with such organizations until such a time as the corporation could make definite commitments. The whole problem of commitments and investigations of the community came up at a meeting in October 1957, at which Messrs. Stengel and Schreiber reported the results of their activities thus far and their feelings that there was no question that the group would get civic cooperation once it was ready to go on the air. Mr. Schreiber, on the basis of his years of experience in broadcasting, had felt from the beginning that these various conversations would have little practical significance because of the time element

²² Moline Television Corp. was represented during its initial period by counsel other than the one who represented it at the current hearing.

involved and these interviews confirmed his opinion. The stockholders adopted the policy of withholding further conversations upon his recommendation.

Statement of policy, principles, and practices

460. Moline Television Corp. has adopted a statement of policy which calls for editorialization by the station on matters which in the opinion of management are of interest to the public, which require accuracy in such presentation and the diligent search for persons of divergent views to present their sides on the subject.

461. The station, while planning to cooperate with public service organizations, will seek to do so at the minimum expense of time and money to these organizations. The stockholders of the corporation are aware that the personnel of these organizations are often overworked. The station, therefore, will strive not to increase these responsibilities by needless or repetitious requests or contracts. Similarly, the station will offer its cooperation in preparation of public spot announcements where these organizations are too preoccupied to appear personally on the program or when such activity on the part of the station will better serve their purposes. The program policy looks toward cooperation with and fostering of organizations serving the interests of the public in the area.

462. The commercial policy of the station calls for policing of advertising copy to comply with Federal, State, and local regulations against false or misleading advertising and the supervision by the commercial standards committee of such copy. The policy also requires the furnishing of a certificate of performance following the broadcast of commercial copy.

463. The strict supervision of commercial content is in line with the suggestions made by various stockholders and with Mr. Schreiber's experience at WGN-TV where the station maintained a copy acceptance department which screened the advertising on the station. The policy also provides that rates charged by the station to local advertisers shall be as low as practicable and consistent with the economic operation and balanced sponsorship.

Proposed program schedule of Moline Television Corp.

464. Statistical analysis of proposed programming:

<i>Hours of operation</i>	
9 a.m.-12:05 a.m., Monday-Thursday	69:20
9 a.m.-1:30 a.m., Friday-Saturday	33:00
10:45 a.m.-12:05 a.m., Sunday	13:20
	106:40
<i>By type</i>	<i>Percent</i>
Entertainment	62.6
Religious	4.1
Agricultural	3.0
Educational	6.1
News	6.4
Discussion	3.0
Talks	10.2
Sports	4.6
Total	100.0

SE F.C.C.

By source

	In percentages			
	8 a.m.- 6 p.m.	6- 11 p.m.	All other hours	Total
Network commercial (NC)	27.8	52.6		32.5
Network sustaining (NS)	1.6	4.3		2.4
Recorded commercial (RC)	28.6	15.0		21.3
Recorded sustaining (RS)	15.5	2.3	84.0	18.0
Wire sustaining (WS)	0.6		3.2	0.7
Live commercial (LC)	12.9	10.0		11.3
Live sustaining (LS)	12.0	14.3	12.8	12.5
Total commercial	70.3	78.6		65.1
Total sustaining	29.7	21.4	100.0	32.9
Complete total	100.0	100.0	100.0	100.0
Proposed broadcast hours (per week)	61:15	23:00	10:25	104:40
Number of spot announcements (SA) (per week)	165	130	40	335
Number of noncommercial spot announcements (NCSA) (per week)	80	60	20	160

Description of locally originated programs

465. Moline Television Corp. proposes to carry locally originated programs falling within each of the classifications of the Federal Communications Commission as follows:

(a) Agricultural programs:

Agricultural Film—Sunday, 12:45 p.m. (RS)—A program devoted to the interest of the suburban gardener and farmer.

News, Market Reports, and Weather—Monday through Saturday, 12 noon (LC)—Long-range and short-range weather forecasts will be given on this program together with an analysis of the importance of the various phenomena to the immediate area. Also given will be noontime reports of market conditions, livestock shipments, and commodity exchanges.

The Farm Hour—Monday, 7 p.m. (LS)—This program will be devoted to appearances by county agricultural agents, farmers, etc. It will feature demonstration of new machinery, safe operation of both new and old machinery, useful hints on feed mixture and cultivation, as well as market trends and reports.

The Farm Hour—Thursday, 9 p.m. (LS)—This program will approach the farm problem from a business point of view.

Bi-State Farmer—Saturday, 11 a.m. (LC)—This program will be devoted to the interests of farmers on both sides of the Mississippi and will feature a review of the week's price trends in livestock, poultry, produce, etc.

Farmers of Tomorrow—Saturday, 11:30 a.m. (LS)—This program will be devoted to the interests of young farmers—the 4-H'ers, Future Farmers of America, etc.

(b) Discussion programs:

Press Conference—Sunday, 5 p.m. (LS)—This program will present reporters and local civic leaders interviewing men and women prominent in the news. Mr. Harper, a director of Moline Television, will serve either as moderator or one of the interrogators.

Youth Speaks Up—Tuesday and Thursday, 4:30 p.m. (LS)—This will be a series of twice-weekly half-hour programs featuring teenagers discussing their problems. Mr. Charles G. Rehling, one of Moline Television Corp.'s directors, will appear from time to time as moderator on this program.

Municipal Forum—Monday, 6:45 p.m. (LS)—This program will present officials of the various municipalities and jurisdictions within the station's area, discussing their problems and achievements and answering questions of interest to the public.

Quint-Cities Forum—Tuesday, 8:30 p.m. (LS)—This will be a townhall-type program with members of various organizations like Elks, Lions, etc., participating in quizzing public officials.

Let's Talk It Over—Thursday and Friday, 9:30 p.m. (LS)—Civic leaders, both local and areawide, will appear on this series of programs to talk over problems faced by the citizens. This program will be supervised and moderated by Mr. Richard Stengel, one of the directors of Moline Television Corp.

(c) *Educational programs:*

Kindergarten Time—Monday through Friday, 10 a.m. (RS)—This program devoted to furnishing educational experience to 4- and 5-year-olds, while at the same time providing a daily demonstration of good teaching. In the event the Chicago Educational Television Association's series is not available by the time the station goes on the air, series of the same character will be utilized.

Home and School—Monday through Friday, 1:30 p.m. (RS)—This filmed program will be produced in cooperation with local educational institutions and boards of education. The showing of films will be arranged so that each day's program is aimed at a particular age and grade level, and the station will attempt to coordinate the viewing by parents and children in school through advance publicity. This approach is in line with the feelings of the superintendent of the Rock Island School System that the schools would most benefit by a public realization of the needs and methods of the public schools.

Arts and Science—Friday, 9 p.m. (LS)—This program will be the station's major effort in class A evening time. The exact format will be at the discretion of the participating schools, universities, and cultural groups. It is anticipated that the program will be carried in series with an individual organization responsible for a group of programs.

Imprint—Saturday, 9:30 p.m. (RS)—This program will present films from the Chicago Educational Television Association dealing with great men and women of our time. Moline Television Corp. has proposed this series on the basis of plans as were present in October 1957. In the event this particular series is not available by the time the station goes on the air, series of the same character will be utilized.

(d) *Religious programs:*

The Christophers—Sunday, 12 noon (RS)—A religious program produced by the Christopher Society.

Evening Prayer Service—Sunday, 6:15 p.m. (LS)—This program will be rotated among the various faiths in the area and will be particularly valuable to those denominations which do not wish to televise their regular services inasmuch as this program will be informal and more flexible in format than full church service.

Quint-Cities Church of the Air—Sunday, 9 p.m. (LS)—This series of programs will offer a service to be conducted by the various churches of the area. The method of selection and frequency of rotation will be governed by the wishes of the various churches. In order to promote tolerance and understanding, the commentator technique will be employed whenever possible in connection with special services and religious holidays so that all viewers may be informed as to the significance and meaning of the services.

Morning Devotions—Monday through Friday, 9:05 a.m. (LS)—This program will be a 10-minute religious program presenting a different clergyman from one of the area churches and will consist of religious music and a brief talk. This program may be live or prerecorded for presentation at that time.

Benediction—Every night (LS)—A 5-minute devotional conducted by local clergymen. Because of the lateness of the hour, this program will be recorded at the convenience of the participant.

The Best of Bishop Sheen—Saturday, 5:30 p.m. (RC)—Selections from the rich treasury of one of America's most beloved religious personalities.

(e) *Talk programs:*

Day's Doings—Daily (LS) (beginning of broadcast day)—This program will present a schedule of the important happenings of the day, special celebrations, meetings, and the program will be devoted to the goings-on in the city. On Sunday it will also include a schedule of religious services.

The Missus Goes to Market—Monday through Friday, 9:30 a.m. (LC)—An interview program produced in the various supermarkets and other general merchandise stores of the area. The station will maintain a backlog of specially prefilmed episodes in order to meet unexpected situations.

Video Kindergarten—Monday through Friday, 11 a.m. (LS)—A program for preschool children to be conducted by a qualified person versed in working with children of kindergarten age. The station will seek the cooperation of various school boards and nursery schools in obtaining such a qualified person.

Your Children—Monday through Friday, 12:45 p.m. (LS)—A program devoted to helping the housewife in the bringing up of her family. It will utilize various experts in the fields of nutrition, child care, etc.

Homemakers Matinee—Monday through Friday, 1 p.m. (LC)—A program featuring decorating hints, recipes, shopping hints, etc. The station's women's director will help the homemaker ease the burdens of her day.

Report From Washington—Monday, 6:30 p.m. (RS)—The station will make time available to the Members of the House of Representatives from the districts covered by the station to address the station's audience on topics of interest to them.

Highway to Health—Tuesday, 9:30 p.m. (LS)—The station will make time available to such organizations as the Medical Society, Dental Society, Society for the Prevention of Blindness, and each organization will be afforded an opportunity to present a program in a manner which it determines most effective for its own purposes.

Your Senator Reports—Saturday, 6:15 p.m. (RS)—The U.S. Senators from the States of Illinois and Iowa will be presented on a consecutive-basis origination (via film or live if available).

(f) *News programs:*

News and Weather—Sunday, 10:50 a.m. (WS)—A live and film program presenting a roundup of the latest news. Although utilizing the services of syndicated news-gathering organizations, the program will also feature news of local happenings and has been classified as wire because the ratio of local and rewritten news is uncertain.

News and Weather—Sunday, 12:30 p.m. (WS)—A live and film program utilizing the services of syndicated news-gathering organizations. The program has been classified as wire because the ratio of local and rewritten news is uncertain.

Midnight Edition—Sunday, 11:45 p.m. (LS)—A 15-minute roundup of the news on which there will be intense coverage of local affairs. Emphasis will be placed, during the appropriate seasons, on sports results.

Morning Edition—Monday through Saturday, 9:15 a.m. (LC)—A program giving full coverage of the morning's news—national, international, and local. The station will be alert for all local news breaks, and intense coverage will be given to the activities of various governmental bodies. Early morning reports of market conditions, etc., will also be given.

News, Market Reports, and Weather—Monday through Saturday, 12 noon (LC)—This program will devote coverage to local, national, and international news. Coverage will be given to various governmental units, and long-range and short-range weather forecasts will be given by the farm director, together with an analysis of the importance of the weather phenomena. Also included will be noontime reports of market conditions, livestock shipments, and commodity exchanges, etc. The Saturday program will feature a summary of agriculture prices.

Three Star Final—Nightly, 6 p.m. (LC)—A program featuring the station's news director giving full coverage of the day's news. A stress will be given to local, regional, and bistate news, the legislatives, school boards, etc. This program will also include long-range and short-range weather

forecasts and interpretations of weather phenomena, closing market reports, commodity exchanges, and other information for the farmer will be included. On Sunday, a member of the staff will present the news with special attention on a summary of the week's events and forecast of the news in the offing. Saturday's program will also emphasize sports results.

Five Star Final—Nightly, 10 p.m. (LC)—A program devoted to the coverage of national, international, and local news. Since many local bodies, particularly the city councils and school boards, have evening sessions, arrangements will be made to cover their activities on this program with the members of these organizations (including the station's directors) advising the news department of their decisions. When warranted, coverage by beeper phone will be utilized. This program too will include local and short-range weather forecasts, an interpretation of weather phenomena, closing reports, livestock shipments, and sports news, with emphasis on local games. Sunday's program will emphasize a summary of the news.

Midnight Edition—Friday and Saturday, 11:45 p.m. (LS)—This late special weekend newscast will take advantage of the time differential to present complete sports summaries, late news developments on the local and regional level. As with all station newscasts, complete weather information will be included.

Final Edition—Friday and Saturday, 1:15 a.m. (WS)—Sports and weather forecasts will be part of this presentation as well as local, national, and international news.

Proposed personnel

466. The proposed full-time staff of Moline Television Corp. is as follows:

Engineering department.....	14
Program department.....	24
Administrative department.....	8
Sales department.....	5
Grand total.....	51

467. In addition to its regularly employed staff, Moline Television Corp. will employ "talent" for such programs as call upon personality productions. The women's director will be such "talent" and will be employed by the station on a "talent" basis. Similarly, commercial or freelance photographers and artists or relief personnel for vacations, etc., will be hired on a part-time or temporary basis.

Physical facilities of Moline Television Corp.

468. The transmitter of Moline Television Corp. will be located on U.S. Highway 150, 2.8 miles south of Orion, Henry County, Ill. The studios will be located at 19th Avenue near 2d Street in Moline, Ill. The studio building will be approximately 120 feet by 80 feet. The dimensions of the proposed studios are:

Studio A, 51 feet by 48 feet.
Studio B, 24 feet by 24 feet.

The proposed studios will be air conditioned. The studio building will also include executive offices, storage areas, dressing rooms, etc. Parking space will be provided in the parking lot adjacent to the building.

Integration of ownership and management

469. The following individuals, all of whom are directors of Moline Television Corp., will participate in the day-to-day operation to the extent indicated:

(a) *Frank Schreiber* will devote all of his time to the managing of the proposed television station.

(b) *Francis J. Coyle* manages his own affairs, and his time is entirely his own. He plans to devote between 2 and 3 hours a day to the affairs of the station in an administrative capacity.

(c) *Charles G. Agnew* investigated the availability of photographic equipment services and personnel to be utilized by the station and will actively supervise the station's local film operations. He has recommended that the station carry a monthly program dealing with hobby photography and has committed himself to moderate such a show. His recommendation of a camera hobby program stems from his acquaintance with many of the members of the camera clubs and his knowledge of their activities.

(d) *Victor B. Day* proposes to devote from 10 to 20 percent of his time to the station in its day-to-day operation. He also proposes to make his knowledge of automotive safety available to the station.

(e) *Richard Stengel* proposes to devote no less than 20 percent of his time to the operation of the station. In addition to handling the various legal problems that may exist, he intends to serve as Mr. Schreiber's right-hand man in establishing the station as a completely local institution. As a result of his previous experience on panel programs as a member of the State legislature and as U.S. Senate nominee, it is his intention to appear and participate in the panel discussion programs produced by the station and to take primary responsibility for the program entitled "Let's Talk It Over."

(f) *Samuel M. Gilman* proposes to devote from 10 to 15 hours per week to the activities of Moline Television Corp. in addition to his duties as secretary-treasurer of the corporation. He will be responsible for the legal and fiscal policies of the station.

(g) *Robert M. Harper* will assist in procuring participants for the station's discussion programs and will personally participate on "Press Conference" scheduled for Sundays at 5 p.m.

(h) *William T. Leonard* would assist in obtaining personnel for "Press Conference" and proposes to devote about 1 day a week to the proposed operation.

(i) *Kenneth Peterson* will devote approximately one afternoon a week to the affairs of the station, contacting school organizations to arrange for programing.

(j) *Charles G. Rehling* will participate as a moderator of programs devoted to youth. He will also assist in the selection of announcers and planning for coverage of local sports. He expects to devote about 4 hours per week to these activities.

These activities do not include the participation of directors in the operations of the various committees to which they belong.

CONCLUSIONS

The overlap issue

1. All of the stockholders in Illiway who have an interest in WREX-TV in Rockford, Ill., have voluntarily stated they would divest themselves of all interests in WREX-TV if the application of Illiway is granted, hence it is concluded that a grant to Illiway, with

a condition of divestment imposed in the grant by the Commission, would eliminate any contravention of section 3.636(a) (1) of the rules.

The financial issue

2. Respecting the financial qualifications of Tele-Views, it is concluded that Tele-Views has the requisite financial qualifications to construct, own, and operate its proposed television station. The total cost of construction is estimated to be \$815,606. Tele-Views will have available the sum of \$300,000 in the form of a bank loan, the sum of \$275,000 to be derived from subscriptions for new capital from subscribers who are financially able to meet their commitments to the applicant, and deferred payment credit for the equipment which totals \$626,355.

3. Before Tele-Views commences operation, the following moneys will have been expended:

Downpayment on equipment	\$156,588
Additional miscellaneous items	31,617
Installation charge by RCA	60,610
Land	12,000
Building and remodeling	25,000
Preoperational expense	15,000
Professional	45,024
Total	\$285,839

Tele-Views has cash available in the sum of \$575,000. After deducting all of the cash expenses required before operation, the applicant will have available the sum of \$239,161 with which to operate the station the initial period during which revenues cannot normally be anticipated. Since the cost of operation will approximate \$60,000 per month (estimated expenses plus equipment payments), it is concluded that the applicant has more than sufficient funds to operate for a reasonable time (nearly 4 months) without revenue, after which it is reasonable to assume that revenues will be available.

Local residence

4. In the instant proceeding only two of the five applicants, namely Community and Tele-Views, are composed entirely of local residents of the Quint City area. In the case of Moline Television Corp., its president, director, and proposed general manager, Mr. Schreiber, is a resident of the Chicago area, while directors Parson and Thomas are also residents of Chicago. Together they own 25 percent of the stock of Moline, and Mr. Schreiber has an option to obtain an additional 5 to 10 percent. The remaining Moline stockholders have resided in the Quint City area for varying periods of time.

5. Midland Broadcasting Co. is controlled by the Atlases of Chicago. H. Leslie Atlas, Jr., president, director, and general manager of Midland, is a resident of Chicago as is his brother, Frank Atlas II, the proposed program director, and his sister, Harriett Atlas, the proposed public affairs director. Together the nonresident Atlas group owns 67 percent of Midland's stock. With the exception of Mr. Lujack, the remainder of Midland's stock is held by life or long-time residents of the area.

6. In the case of Illiway, Mr. Joseph Baisch, proposed executive vice president, director, and general manager, is a nonresident of the Quint City area, having previously resided in Wisconsin, Michigan, and elsewhere. He is now a resident of Rockford, Ill., which is outside the coverage area of Illiway's proposed station. Mr. Mazzie, Illiway's proposed station manager, is also a resident of Rockford as is Mr. Guyer, secretary and director of Illiway, and Mrs. Ruth Davis, stockholder. Stockholder Madison is also a nonresident of the Quint City area, residing in Table Grove, Ill., which is outside Illiway's proposed coverage area. Together these individuals hold 32.5 percent of Illiway's stock. In addition, two of Illiway's stockholders, Messrs. Klingbiel and Carpentier, while maintaining homes in the Quint City area, are required, by their political positions, to live during certain periods of the year in the capital city of Springfield. Together they own 3.7 percent of Illiway's stock.

7. All of Tele-Views' stockholders have resided in the Quint City area for varying periods of time, and are fully identified with the area. Mr. Sirota was unable to appear when called for cross-examination at the hearing. As a result, it was stipulated by all parties that Tele-Views does not claim and will not be awarded any comparative advantage based upon the participation of Mr. Sirota in the Tele-Views' application. This being the case, no comparative advantage can attach to Mr. Sirota's local residence. Since he will hold about 13 percent of Tele-Views' stock, it must be concluded that Tele-Views' claim to local residence is diminished to some extent.

8. Half of Community's 16 stockholders are lifetime residents of the Quint City area. Mr. Foster, Community's president and director, has resided in the area since 1911 when he was 12 years old; Mr. Rose since 1909; and Mr. Bendle all his life except for 4 years. The remaining stockholders are all longtime residents of the area. It is therefore concluded that a preference must be accorded to Community over the other applicants on the criterion of local residence of its stockholders.²⁹

Civic participation

9. Except for Mr. Schroeder, 1.504 percent stockholder and chairman of Tele-Views' board, who has been quite active in local civic affairs, the remainder of Tele-Views' stockholders have not been outstanding in participation in local affairs. No credit can be accorded for any civic activity on the part of Mr. Sirota in accordance with the previously mentioned stipulation.

10. In the case of Midland, 67 percent of its stock is owned by the Atlases, nonresidents of the area, who have had no participation in local Quint City civic affairs. While the Atlases have been active in Chicago civic affairs, less weight can be attached to this activity

²⁹ In reaching this conclusion, consideration has been given to the fact that, in the case of Midland, the Atlases propose to move to Moline in the event of a grant; that, in the case of Moline, Mr. Schreiber proposes to move to Moline in the event of a grant; and that, in the case of Illiway, Messrs. Baisch and Mazzie would propose to move to Moline in the event of a grant. While an intention as to future residence in the community to be served is entitled to some weight, the Commission has consistently refused to accord to it the same weight which it attaches to present residence and longtime past residence.

since it lends no assurance of an insight into the needs of the community to be served. However, several of Midland's small local stockholders have substantial records of civic activity: Mr. Rosborough, Mr. Burrows, Mr. Evans, and Mr. Oakleaf. Together, these men represent 18 percent of Midland's ownership. Mr. Hoppe, Mr. Johnson, and Mr. Estess have also been active in the affairs of their communities. Mr. Stone has been active primarily in farm organizations and Mr. Lujack has contributed of himself considerably.

11. In the case of Moline, Mr. Schreiber, its president and proposed general manager, has no record of civic activity in the Quint Cities. Messrs. Parson and Thomas, also Chicagoans, have had no civic activity in the Quint Cities. Mr. Coyle, Moline's board chairman and largest stockholder, Mr. McLaughlin, Mr. Davis, and Mr. Young have demonstrated participation in civic affairs. Mr. Day, Mr. Stengel, Mr. Gilman, and Mr. Dowsett have participated actively in the affairs of their communities.

12. Illiway's president, director, and largest (21 percent) stockholder, Mr. Ellis, has a limited civic record. Mr. Bettendorf, Illiway's vice president, director, and third largest stockholder, has been intimately connected with the development of Bettendorf, industrially and otherwise. Mr. Baisch, Illiway's executive vice president and proposed general manager, and Mr. Mazzie, the proposed station manager, are nonresidents of the Quint City area and have no record of civic activity there. Mr. Guyer, secretary, director, and second largest stockholder (18 percent) of Illiway, and Mrs. Davis, 4.5-percent stockholder, are nonresidents with no record of civic activity in the Quint Cities. Messrs. Von Maur, Van Alstyne, and Madison have modest civic records. Mr. John Ruhl has been active in the chamber of commerce. Mr. C. Arthur Ruhl is deceased and no record can be claimed for his estate. Most of Mr. Klingbiel's activity probably occurred before he went to Springfield as a judge in 1953. Mr. Sturtevant's civic participation has been relatively modest. Of the remaining Illiway stockholders, Mr. Schierbrock and Mr. Ryan stand out as having been unusually active in the affairs of their communities.

13. The long local residence of all of Community's stockholders is reflected in its record of civic participation. Community's president, Mr. Foster, has been unusually active in civic affairs, devoting his time over the years and currently to a wide variety of civic and community affairs, not only as a member of civic organizations but in assuming civic responsibilities of the highest order. In like fashion, Messrs. Hartz, Ainsworth, C. I. Josephson, Jr., Underwood, French, Werner, Rose, Whitmore, and Waldmann have outstanding records of civic participation in important and substantial positions of responsibility. Messrs. Hoersch, Harvey, and Bendle can also claim good records in this field. Messrs. Priester and C. I. Josephson III, both young men, have been active to a lesser degree. Mr. Wodlinger, Community's proposed executive vice president and general manager, has been active in a wide variety of civic affairs in the Quint City area in positions of responsibility. He has also had the opportunity during his 10 years of experience at WOC-TV in Davenport to work directly with

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civic and community organizations in serving their television needs in the area to be served by Community's proposed station.

14. Community deserves a preference in this area of comparison.

Diversification of business interests

15. While a matter of lesser significance than the foregoing, a comparison of the diversification of the business interests of the principals of the applicants is in order. Midland counts among its stockholders a lawyer, a department store owner, a farmer, an insurance man, real estate operator, an automobile dealer, three manufacturers, and three broadcasters. In the case of Tele-Views, most of its ownership is in the printing business. It also counts among its stockholders two lawyers, a furniture store owner, a loan company, a bank, insurance dealer, and paper company. Turning to Moline Television Corp., 8 of its 23 stockholders are lawyers, including 1 judge; 3 are manufacturers; 3 are in the construction business; and 2 are in insurance. The remainder is comprised of a druggist, a stockbroker, a newspaperman, a doctor, an advertiser, a broadcaster-restaurant owner, and a merchant. Illiway contains two broadcasters, a lawyer-broadcaster, a savings and loan-office equipment-insurance-broadcaster, six bankers, or investment bankers, an architect, a doctor, a judge, a lawyer, a housewife, two automobile dealers, a farmer, a mayor, the secretary of state of Illinois, an equipment manufacturer; and Mr. Ellis, who is engaged in the brewery, liquor distributing, hotel, and sand, gravel, and cement businesses. The record does not show what business one of Illiway's stockholders, Mr. Van Alstyne, may be engaged in. In the case of Community, there are found among its stockholders men in real estate; insurance, broadcasting; lumber and building materials; two farmers; two lawyers; an auditor, who is also connected with a loan company, real estate, bakery, and shoestore; film equipment manufacturing; farm machinery manufacturing; the jewelry business; Sears, Roebuck; the drug business; bankers; a public utility (gas and electric); highway construction; other construction; a finance corporation; and the past commander of the Rock Island Arsenal. Among Community's stockholders are found leaders in large business concerns such as Mr. French, a vice president of Deere & Co.; Mr. Whitmore, president of Iowa-Illinois Gas & Electric Co.; and Mr. Hartz, retired vice president of McKesson & Robbins. It is concluded that Illiway, Moline, and Community share a preference over Midland and Tele-Views in this area.

Diversification of media of mass communications

16. Three of the five applicants in this proceeding—Tele-Views, Community, and Midland—have no other media interests. In the case of Moline Television Corp., Mr. Harper, a director of Moline, is the major stockholder, secretary-treasurer, and a director of the Herald Printing & Publishing Co., East Moline, Ill., which publishes the largest of the two weekly newspapers in the Quint City area; namely, the East Moline Herald, serving the eastern portions of Moline, all of East Moline, Silvis, Carbon Cliff, Barstow, and Hampton, with a circulation of 7,000 to 7,200.

17. Illiway's stockholders have several media interests. Mr. Baisch, Illiway's executive vice president, director, 4.5 percent stockholder, and proposed general manager, owned 1.43 percent of the stock of WREX-TV, Rockford, Ill., at the time of the hearing and was its general manager. However, he proposes to sever all connections with WREX-TV in the event of a grant to Illiway. Similarly, Mr. Guyer, secretary, director, and 18 percent stockholder of Illiway, is secretary, director, and 6 percent stockholder in WREX-TV. He likewise will dispose of his WREX-TV connections in the event of a grant to Illiway. However, both Mr. Baisch and Mr. Guyer have other broadcast interests. Mr. Baisch owns 21½ percent of the stock of Caster Robinson Television Corp., which holds all of the stock of Cimarron Television Corp., licensee of KOCO-TV, Enid, Okla. He also owns 4 percent of the stock of Gran Broadcasting Co., licensee of KGA, Spokane, Wash. Mr. Guyer owns 10 percent of the stock of KGA. At the time of the hearing, Mr. Cleaveland, a 3.6-percent stockholder in Illiway, was a 10-percent stockholder, vice president, and treasurer of radio station WQUB, Galesburg, Ill., which is within Illiway's proposed grade A service contour.

18. It is concluded that Community, Tele-Views, and Midland share a preference over Illiway and Moline in the factor of diversification of the media of mass communications.

Broadcast experience of principals

19. *Tele-Views*.—None of Tele-Views' stockholders has had prior broadcast experience. The only person connected in any way with Tele-Views who has prior experience in the industry is Tele-Views' consultant, Mr. Paul Mowrey. It was he, primarily, who developed Tele-Views' application and exhibits for the hearing. Mr. Mowrey proposes to work for the station as a consultant for the first year of its operation. After that period, insofar as the record shows, there will be no one with experience except such experience as shall have been gained with Tele-Views itself.

20. *Midland*.—None of Midland's local stockholders, representing 33 percent of its ownership, have had prior broadcast experience except for Mr. Lujack, who has had some experience as a sports commentator and on panel shows. The Atlases have had broadcast experience in Chicago stations. H. Leslie Atlas, Jr.'s television experience has been his work for about 1 year on CBS color television plans in the Chicago area, although the record indicates CBS had no television station in Chicago at the time. He has worked in radio sales at WBBM, Chicago, and was program director for WIND, Chicago. Frank Atlas has been executive producer and program director at WBBM-TV, Chicago, and at the time of the hearing was about to become sales manager of that station. He has been in the broadcast business since 1950 when he went to work for his father in sales at WBBM, where his father was general manager. Harriet Atlas, who graduated from college in 1955, has worked for her father at WBBM-AM and TV, Chicago, since that date as public affairs director. None of the Atlases have had past broadcast experience in the Quint City market.

21. *Moline Television Corp.*—None of Moline's local stockholders, except for Mr. Rehling, who worked in sports and news at WSUI while in college sometime prior to 1947 has had prior broadcast experience. Mr. Parson, one of the Chicago stockholders, was also a radio announcer while in college in 1941-44. The only Moline stockholder with any degree of meaningful experience is its proposed manager, Mr. Schreiber. Schreiber has had experience in various positions with WGN, Inc., in Chicago, serving as general manager of WGN-AM-TV from 1946 to 1956. He was also an officer and director of WGN; a director of WPIX-TV, New York; and a director of Mutual Broadcasting System.

22. *Illinway.*—The only two stockholders in Illinway who bring to it operating experience are Messrs. Mazzie and Baisch.²⁰ Mr. Mazzie was associated with WOW-TV in Omaha from 1949 to 1952. In 1953 he joined WREX-TV as production manager, becoming program director in 1954. Although Mr. Baisch had participated in the ownership of stations previously, he apparently first assumed an operating broadcast position when he became general manager of WREX-TV in 1954. There is evidence in the record as to the public service programming of WREX-TV under Mr. Baisch's management which would reflect favorably on his experience and that of Mr. Mazzie. Mr. Baisch has had no experience in television or radio in the Quint City market.

23. *Community.*—In the case of Community, Mr. Wodlinger, executive vice president, and proposed general manager, is the principal stockholder bringing television experience to the applicant. Mr. Wodlinger has had 10 years of varied experience in the actual market to be served by Community—the Quint Cities. He has worked in virtually all phases of studio operations, except engineering.

24. Summarizing, it may be concluded that all of the applicants, except Tele-Views, have within their organizations as proposed general managers, men with varying quantities of television and radio experience. Since Tele-Views has no principal with television experience, it must suffer a demerit in this area of comparison. In the case of Midland, three of its stockholders have had experience, although one of them, Harriet Atlas, has been in the business a relatively short period of time. The experience of all three Atlases has been obtained in working for their father at CBS. Moline's proposed manager has been out of the business for several years. Messrs. Baisch and Mazzie have creditable records of experience. Mr. Wodlinger of Community has had 10 years of experience in television in the Quint City market. The latter factor compels a preference for Community in this area of comparison.

Planning

25. In the foregoing findings of facts, the various activities of the respective parties are set forth insofar as planning is concerned. There is no need for further or repetitious detail here concerning advisory committees, contacts, surveys, equipment needs, etc. It is

²⁰ Messrs. Bettendorf, Guyer, and Cleveland have held other broadcast interests, but there is no evidence that they have had operating broadcast experience.

concluded that all parties will adequately staff their stations, that studios and transmission facilities will be available and adequate, hence, insofar as planning credit may be given for these factors, little or no preference is indicated, although Midland made the most elaborate showing. Insofar as planning is related to proposed programming, all applicants are about equal except that it may be noted that Moline relies primarily upon subjective factors; i.e., the professed intimate knowledge of its officers, stockholders, and directors of the Moline area rather than objective data gleaned from contacts and observations specifically for the purpose. Moline's position is that by the time of a grant, conditions may be different anyway, hence the continuing knowledge of, and experience with, the changing community by its principals are of as much or more value than present collections of data. No preference is given on planning.

Integration of ownership and management

26. There is no need in these conclusions to set forth again and in detail the names of principals concerned and the percentages of time they will devote to the affairs of the stations—and in what capacities. The facts hereinbefore related speak for themselves, and on the basis of these facts and without rehash, it is concluded that Community and Midland are ahead of the field in this regard, with Community deserving a slight preference over Midland. This conclusion is drawn, at the risk of consequent exception to mixing categories, partially on the basis of Community's local experience and residence (hence more meaningful integration), but, it is also evident from the facts, that Community, by numbers of people owning stock will be 100 percent integrated with management (even though this does not mean 100 percent integration of stockholders' time).

Programming

27. Because of the current national temper, official and unofficial, concerning television programming, the foregoing findings on programming have been unusually detailed for an initial decision, although space requirements would not permit the word-for-word proposals and attendant "puffing up" submitted by the applicants. Moline's proposals are briefest because of reasons, no doubt, sketched in the paragraph, *supra*, on planning. In the final analysis, Moline's philosophy may be the most realistic, but it leaves much to conjecture. That is not to say that Moline's program proposal is not a bona fide one or one which would not or could not be effectuated; it is only to say that it makes comparison more difficult. All proposals presented are well balanced and deserve commendation, especially in the areas of farm programs and news coverage. A slight preference is awarded, however, to Community on the basis of what appears to be a higher percentage of educational programs, all of high caliber.

Studios, staffing, and equipment

28. The record is replete with descriptions of studios, staffing, and equipment, but it is concluded that, while differences are shown, there is, in none of these regards, such outstanding superiority shown by any applicant that decisional significance should attach.

Policies

29. All applicants express their intention of following the NAB code. In addition, in the findings of fact, other matters of a policy nature have been recited; most of these aim at the station keeping its fingers on the public pulse for the purpose of maintaining timely, appropriate programming. As in the case of planning, some policy proposals are more elaborate than others, but no solid basis for a preference of one over another exists.

Other considerations

30. Charges have been brought of infractions of Federal agency rules and procedures; i.e., OPA, FCC. In retrospect, these appear to be either minor or to have been legally corrected. It is concluded that no action by any person associated with any applicant herein is of such untoward nature as to have adverse implications to any applicant herein. Likewise no stigma should attach to the part any person connected with WREX-TV played in connection with the pay-TV incidents in Rockford. The incidents do not show domination by CBS over the station, and certainly there was nothing illegal or in bad taste involved.

31. On the basis of the foregoing findings of fact and conclusions, it is ultimately concluded that the public convenience and necessity would best be served by a grant of the application of Community Telecasting Corp., and the consequent denial of the other applications.

Accordingly, *It is ordered*, This 22d day of April 1960, that unless an appeal from this initial decision is taken by the parties, or the Commission reviews the initial decision on its own motion in accordance with the provisions of section 1.153 of the rules, the application of Community Telecasting Corp. for a construction permit for a new television broadcast station to operate on channel 8 in Moline, Ill., *is granted*; and the applications of Tele-Views News Co., Inc., Midland Broadcasting Co., Illiway Television, Inc., and Moline Television Corp. for the same facility *Are denied*.

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CONSOLIDATED BRIEF FOR APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION, Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,102

MIDLAND BROADCASTING CO., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,108

ILLIWAY TELEVISION, INC., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

United States Court of Appeals

No. 17,110

TELE-VIEWS NEWS CO., INC., Appellant,
v.

NOV 8 1962

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

Joseph M. Kittner

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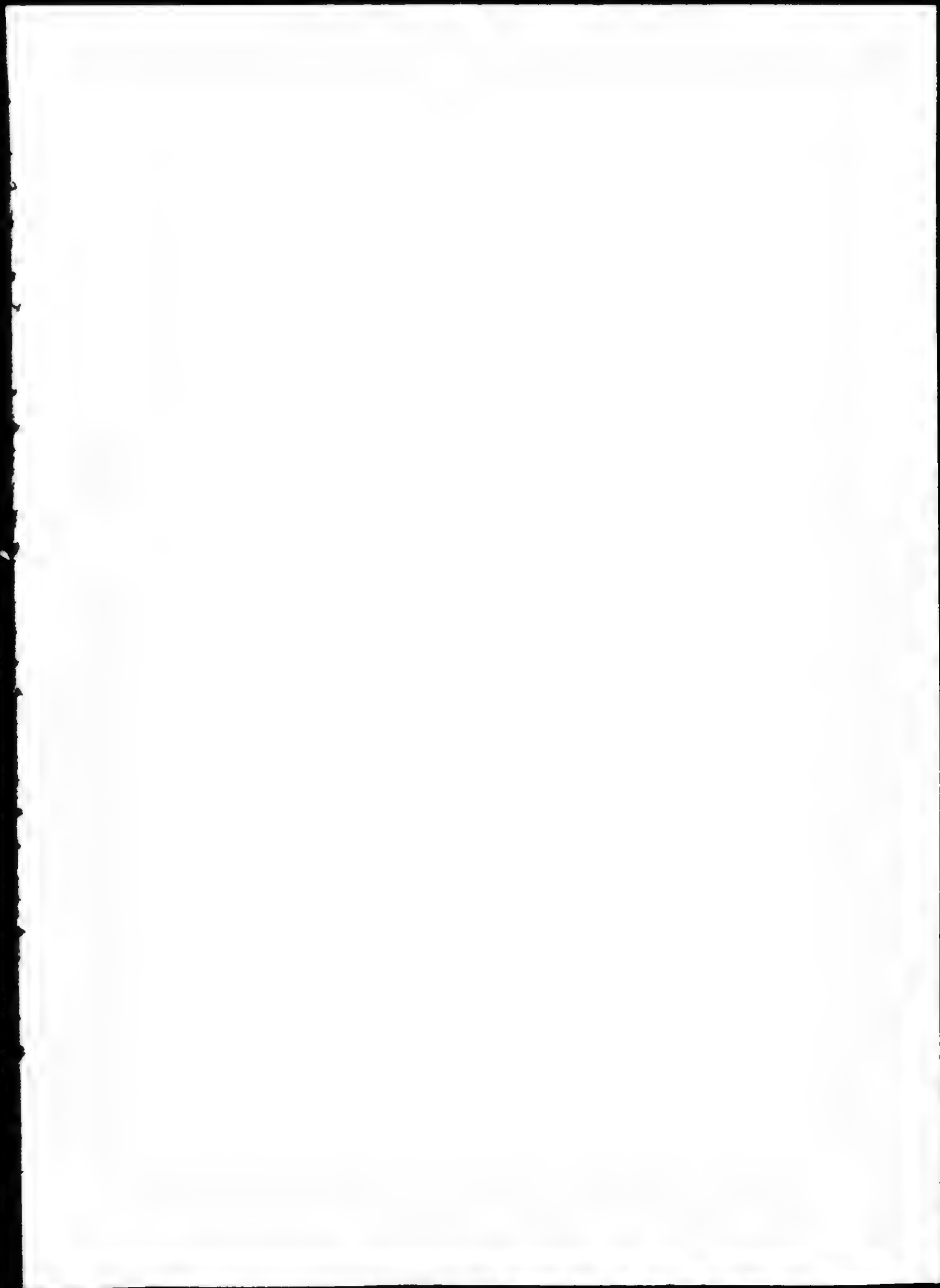
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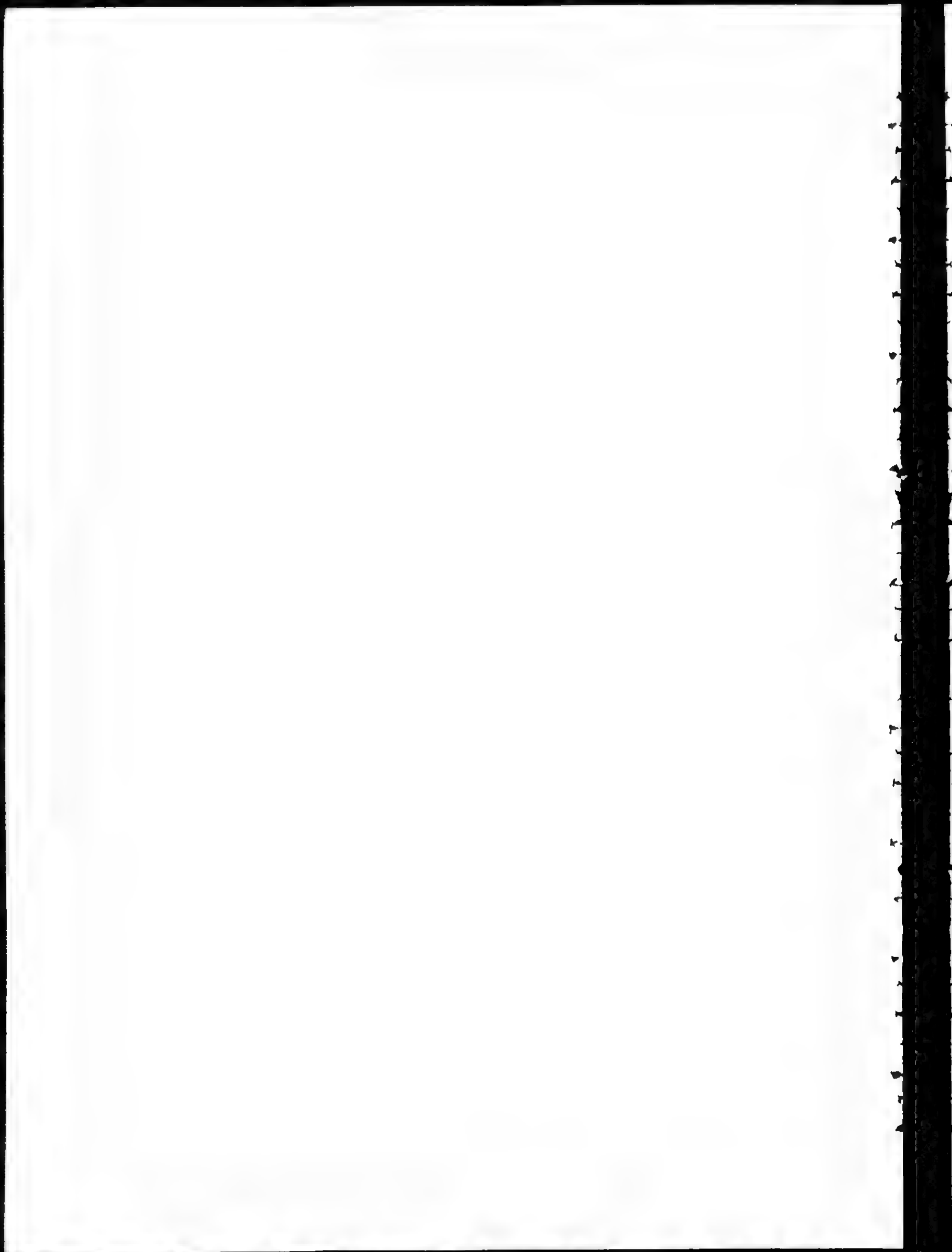


(i)

QUESTIONS PRESENTED

Pursuant to a Prehearing Stipulation dated September 10, 1962, approved by Prehearing Order dated September 12, 1962, all parties agree that the following questions are presented:

1. Whether the Commission's findings form an adequate basis for its conclusions and whether the findings and conclusions meet the minimum requirements to permit proper judicial review.
2. Whether the Commission's decision granting the application of Moline Television Corporation, based upon a determination that the criterion of broadcast experience was determinative, was arbitrary and erroneous, unsupported by the record, and failed properly to consider all relevant matters affecting the qualifications of the applicants.
3. Whether the Commission's decision that there were no significant differences among the applicants with respect to the planning of their program proposals was contrary to the record and whether the decision constituted an improper departure from and violation of established Commission policy.



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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

No. 17,102

MIDLAND BROADCASTING CO.,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

No. 17,108

ILLIWAY TELEVISION, INC.,	Appellant,
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TELE-VIEWS NEWS CO., INC.,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

On Consolidated Appeal from a Decision of the
Federal Communications Commission

CONSOLIDATED BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

Case Nos. 17092, 17102, 17108, 17110 are appeals from a Decision and Order of the Federal Communications Commission ("Commission") released May 21, 1962 (32 F.C.C. 923), denying the mutually exclusive applications of Community Telecasting Corporation ("Community"), Midland Broadcasting Company ("Midland"), Illiway Television, Inc. ("Illiway"), and Tele-Views News Company, Inc. ("Tele-Views") for a construction permit for a new television station to operate on Channel 8, Moline, Illinois, and granting the mutually exclusive application of Moline Television Corporation ("Moline") for the same facility.

These appeals are taken pursuant to Section 402(b) of the Communications Act of 1934, as amended (47 U.S.C. § 402(b)).

STATEMENT OF THE CASE

Mutually exclusive applications for a new television station to operate on Channel 8 at Moline, Illinois were filed by Appellants, Community (R. 1-70), Midland (R. 6671-6772), Illiway (R. 7538-7648), and Tele-Views (R. 5934-6019), and by Intervenor, Moline (R. 8452-8633). By Order released June 30, 1958 these five applications were designated for consolidated hearing (R. 241-243). Insofar as here pertinent the hearing issues specified in the Commission's Order were the standard comparative issues under which the Commission chooses between mutually exclusive applications for the same facility:

To determine on a comparative basis which of the operations proposed in the above-captioned applications would best serve the public interest, convenience and necessity in light of the record made with respect to the significant differences among the applicants as to:

- a. The background and experience of each having a bearing on its ability to own and operate the proposed television broadcast station.

- b. The proposals of each with respect to the management and operation of the proposed television broadcast stations.
- c. The programming service proposed in each of the above-captioned applications.

Public hearings in the above-described proceeding were held commencing on January 26, 1959, and the record was closed on September 24, 1959. Proposed Findings and Conclusions, together with Replies, were filed by the several applicants and the Commission's Broadcast Bureau. On April 28, 1960 the Hearing Examiner released an Initial Decision looking toward grant of the application of Community and denial of the several other applications (R. 5302-5459; 32 F.C.C. 939-1072). Exceptions to the Initial Decision, together with Briefs in support thereof, and Replies to Exceptions were duly filed by the parties. The case came on for Oral Argument before the Commission, sitting en banc, on June 2, 1961.

On May 21, 1962 the Commission by a 3 to 2 vote released its Decision (Commissioners Minow, Chairman, and Craven not participating; Commissioners Ford and Cross dissenting), granting the application of Moline and denying the several other applications. Notices of Appeal and Statements of Reasons Therefor were filed seasonably by Community, Midland, Illiway, and Tele-Views. Notices of Intention to Intervene were filed in the several appeals by Moline on June 22, 1962.

On July 9, 1962, upon motion by Appellee, Commission, which was consented to by Appellants and Intervenor, this Court consolidated the several appeals for all purposes. On September 12, 1962, this Court approved a Prehearing Stipulation in which Appellants committed themselves to file a joint and consolidated Brief with respect to the issues delineated in the Stipulation.

a. The Initial Decision

The Hearing Examiner adopted, in substance and with certain condensation, the Proposed Findings of Fact of each of the applicants with respect to itself (32 F.C.C. at 939-1064). Additionally, he prepared a set of Conclusions (32 F.C.C. at 1064-1072) which purported to evaluate, in the light of the Findings of Fact, the relative showings of the applicants in the various comparative categories.

The Hearing Examiner's Decision found the five applicants substantially equal in the categories of Planning, Policies, and Staff, Studio and Equipment. It found Community superior to all of the other applicants in the categories of Local Residence, Civic Participation, Broadcast Experience, Integration of Ownership and Management and Programming. It found Community, Illiway and Moline superior to the other two applicants in the category of Diversification of Business Interests and it found Community, Tele-Views and Midland superior to the other two applicants in the category of Diversification of Mass Media of Communication. Based upon the foregoing, the Initial Decision proposed to grant the application of Community.

b. The Commission's Decision

The Commission adopted by reference the Findings of Fact in the Initial Decision, except to the extent modified by its own Decision and rulings upon Exceptions (32 F.C.C. at 924). Further it adopted in part and modified in part the Conclusions contained in the Initial Decision.

The Commission agreed with the Hearing Examiner's conclusion that the five applicants were substantially equal in the categories of Planning, Policies, and Staff, Studio and Equipment (32 F.C.C. at 925). In so holding it rejected the contention of the other parties that Moline's express refusal, as a matter of policy, to make any study of community needs rendered its conduct contrary to the express policies of the

Commission and clearly inferior to the efforts of the others in studying community needs and interests.

It further agreed with the Examiner's conclusion that Community, Illiway and Moline were superior to the other two applicants in the category of Diversification of Business Interests (32 F.C.C. at 926) and with his conclusion that Community, Tele-Views and Midland were superior to the other two applicants in the category of Diversification of Mass Media of Communication (32 F.C.C. at 925-926); and it agreed with the Examiner's conclusion that Community was superior to all of the other applicants in the category of Local Residence (32 F.C.C. at 926-927). It disagreed with the Hearing Examiner by finding Community, Tele-Views, Illiway and Moline equal to each other and superior to Midland in the category of Civic Participation (32 F.C.C. at 926). It found Midland superior to all of the other applicants in the category of Integration of Ownership and Management (32 F.C.C. at 927-928). Finally, it found Moline superior to all of the other applicants in the category of Broadcast Experience (32 F.C.C. at 928-930). This determination was not based upon a conclusion that Moline possessed a principal with experience while the other applicants did not, but rested upon its conclusion that Frank Schreiber, President of Moline, had more extensive experience than the principals of Community, Midland and Illiway, all of whom had very extensive experience.

In granting the application of Moline the Commission relied almost exclusively upon its evaluation of the broadcast experience factor (32 F.C.C. at 931). Its evaluation here was limited to broadcast experience per se. It refused to recognize, as it had always done in the past, that in evaluating a person's broadcast experience, it is required to evaluate the quality of the individual's performance as a broadcaster. Based on its novel and unprecedented treatment of broadcast experience in this case, it refused to consider clear and undisputed facts demonstrating that Schreiber's performance was of

poor quality. With respect to the other comparative categories it concluded either that the applicants were substantially equal or that the category was not of decisional significance in this case. Its evaluation of Schreiber's experience therefore became decisive.

c. The Dissent

In a Dissenting Statement (32 F.C.C. at 938) Commissioner Ford said that the Commission had attributed unwarranted importance to the factor of broadcast experience and there was therefore no adequate basis for the grant to Moline. Further, he said that the record did not, in fact, support the contention that Moline's experience was superior, and certainly did not support the determination that Moline was entitled to a substantial preference in this area. Relying primarily upon the Hearing Examiner's evaluation, in the absence of error, Commissioner Ford favored granting the application of Community.

STATUTES AND RULES INVOLVED

The relevant portions of the Statutes and Rules involved are set forth in the Appendix to this Brief.

STATEMENT OF POINTS

1. In refusing to give Moline a substantial comparative demerit for its failure to make a study of community needs, the Commission erroneously failed to follow its established policies.
2. The Commission erroneously gave the factor of broadcast experience per se decisive weight in this proceeding.
3. Based upon all of the evidence in the record, the Commission improperly considered Schreiber's experience to be more extensive than that of the principals of other applicants.

4. The Commission improperly considered only the favorable factors reflecting on Schreiber's experience and erroneously refused to consider the unfavorable evidence.

5. The Commission has failed to state with clarity the basis for its decision.

SUMMARY OF ARGUMENT

1. Each of the appellants made careful and assiduous surveys and contacts to ascertain the programming needs of the area to be served. Moline, the successful applicant below and intervenor herein, avoided making such a survey as a matter of policy, relying upon the local residence and knowledge of certain of its own stockholders in determining needs. The Commission's decision found all applicants equal on this criterion in the face of and contrary to its announced and repeatedly emphasized policy that the principal ingredient of an applicant's or licensee's responsibility is the duty to make affirmative efforts by surveys and contacts with community leaders to ascertain the area's needs. The Commission's failure in this case to apply its established policy with respect to ascertainment of needs requires a reversal in accordance with the rule of this Court in Sunbeam Television Corp. v. Federal Communications Commission, 100 U.S. App. D.C. 82, 243 F.2d 26 (1957). Moreover, had it applied its policy, as it was required to do by Sunbeam, it could not have avoided giving Moline a substantial comparative demerit which should have altered its final conclusion to award the permit to Moline.

2. The decision favoring Moline is based upon an unprecedented, unwarranted, unexplained and unreasoned weighting of the factor of broadcast experience per se. Appellants Community, Illiway and Midland all presented principals with extensive past broadcast experience. The Commission concluded that the past experience of Moline's President, Frank Schreiber, was superior to that possessed by the principals

of the other applicants. The Commission then concluded that Schreiber's superiority in experience outweighed all of the other comparative factors such as local residence, integration and diversification of the ownership of mass media in which other applicants were found to be superior to Moline. This unprecedented weighting of the experience factor, which in past Commission decisions has never been held to be decisive per se, was unexplained. Moreover, in arriving at the conclusion that Schreiber's experience was superior, the Commission failed to consider the facts of record which demonstrated that the quality of Schreiber's past performance was, in fact, poor. Absent some consideration of the nature of experience in terms of the quality of performance, the factor indicates mere prior exposure to problems of broadcasting, and as such, it was arbitrary for the Commission to accord to it dispositive weight.

3. The Commission's decision failed to state the reasons and basis for its conclusion as required by the Administrative Procedure Act, the Commission's own regulations and the decisions of this Court. By pursuing a method of adopting the Examiner's findings and conclusions, except as modified in the final decision and as modified in its rulings upon exceptions, the Commission has presented this Court with the near-impossible task of attempting to review a make-shift decision, replete with inconsistent conclusions and rulings on exceptions, and otherwise unreasoned and inarticulate. The form of the decision is such that the task of divining the Commission's reasoning in departing from its established criteria and policies, as was done in this case, imposes an undue burden on the Court.

ARGUMENT

The appellants in this proceeding have concluded, following extensive consultation and deliberation, to adopt the unprecedented course of filing a joint Brief and consolidating the oral argument to this Court. In doing so, each appellant has determined not to advance through

individual briefs and orally certain contentions which relate peculiarly to its own position in the comparative proceeding before the Commission. In adopting this procedure, none of the appellants in any sense waives or abandons its separate and individual claims for preference which were aggressively asserted before the Commission. In the event of a remand, which as we will demonstrate the interests of justice require, these contentions will be renewed below.

The appellants in this united appeal submit that the Commission's determination to grant the Moline application is clearly erroneous for the reasons advanced in this Brief, and that the Commission's Decision must be set aside. This Court has in the past considered many appeals in comparative proceedings such as this. It has probably become inured to the advocacy of competing claimants, each of whom supports his individual cause with a variety of legal and evidentiary contentions. Appellants have attempted, by the unique procedure which has been agreed upon, to eliminate contentions with respect to all but the most patent errors committed by the Commission. Appellants believe that this Court has rarely, if ever, been called upon to review a comparative television case wherein the regulatory agency has so far departed from the reasoned decisional process which is required of it. Because the errors relied on jointly by appellants are so serious, it is respectfully urged that when, as appellants believe it must, this Court remands the proceeding to the Commission, it should do so with clear instructions that the entire decision be reconsidered. Only in this manner will appellants be assured of the opportunity to raise again before the Commission all contentions respecting their individual applications with respect to which the Commission may have erred.

- I. THE COMMISSION COMMITTED REVERSIBLE ERROR BY FAILING TO APPLY ITS CLEARLY ENUNCIATED POLICY REQUIRING A SERIOUS DEMERIT FOR MOLINE FOR FAILING TO TAKE AFFIRMATIVE STEPS TO ASCERTAIN THE NEEDS OF THE COMMUNITY FOR ITS PROPOSED PROGRAM SERVICE.

In Sunbeam Television Corp. v. Federal Communications Commission, 100 U.S. App. D.C. 82, 243 F.2d 26 (1957), this Court held that in a comparative television proceeding such as this, it was error for the Commission to depart from or fail to apply an established policy which was reflected in its own Rules and in its reported decisions. In the instant case, the Commission has departed even more blatantly from a long-standing and clearly enunciated policy which is directly related to the very heart of the ultimate inquiry in every comparative proceeding.

This Court has stated (Johnston Broadcasting Co. v. Federal Communications Commission, 85 U.S. App. D.C. 40, 48, 175 F.2d 351, 359, (1949)):

* * * in a comparative consideration, it is well recognized that comparative service to the listening public is the vital element, * * *.

On July 29, 1960 the Commission issued a Report entitled Commission Policy on Programming, 20 RR 1901, in which it set forth for the information of all applicants, licensees, and other interested parties its views concerning the extent and limitation of its power concerning the programming and proposed programming of licensees and applicants, and in which it explained at great length and in precise detail the manner in which applicants and licensees would be expected to fulfill their responsibilities in this area. The Commission noted that it could not prescribe precise programs or even types of programs which should be broadcast by each station, but, on the contrary, that the responsibility for all material which it broadcast must rest on the licensee.

Although the Commission, and its predecessor, the Federal Radio Commission, have set forth standards and guidelines with respect to programming, its Report stated that (20 RR at 1915; emphasis added):

. . . the principal ingredient of the licensee's obligation to operate his station in the public interest is the diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his community or service area, for broadcast service.

According to the Commission, the standard of programming in the public interest will be best fulfilled only by the care spent in obtaining and reflecting the views obtained.¹

The Commission further explained the manner in which the tastes, needs and desires of the public are to be ascertained (20 RR at 1915):

. . . What we propose is documented program submissions prepared as the result of assiduous planning and consultation covering two main areas: first, a canvas of the listening public who will receive the signal and who constitute a definite public

¹ A random selection of other criteria utilized in deciding comparative cases reveals how closely they are related to the overall policy of meeting local needs: local ownership tends to promote responsiveness to local needs with which the local resident is familiar and concerned, Sarkes Tarzian, Inc., 17 RR 905, 922; integration of ownership and management increases responsiveness to local needs where the owners are local residents, and also increases the probability that programming promises will be kept since the people operating the station are those who made the promises, Hi-Line Broadcasting Co., 13 RR 1017, 1042; and diversification of background of owners means greater understanding of various local needs, Mid-West Broadcasting Co., 3 RR 764, 768.

In a current article on administrative standards, Judge Friendly points out that: "[T]here are only two true elements of policy—the community should have the programs best adapted to its needs, and this goal should be achieved in a manner that will avoid undue concentration of the media of mass communication. . . . Most of the so-called criteria are simply a checklist of evidentiary items bearing, some directly and others indirectly, on an applicant's ability to achieve one or the other or both of these policy goals." The Federal Administrative Agencies: The Need for Better Definition of Standards, 75 Harv.L.Rev. 1055, 1060 (1962).

interest figure; second, consultation with leaders in community life — public officials, educators, religious, the entertainment media, agriculture, business, labor — professional and eleemosynary organizations, and others who bespeak the interests which make up the community.

Of the five applicants in this case, only one made virtually no effort whatever either to canvass the listening public or to consult with leaders in community life in connection with the preparation of its program proposal. That applicant was Moline, the intervenor herein, which informed the Commission that its General Manager, Schreiber, considered such surveys or effort to be "eye-wash" (R. 9143; Moline Br. p. 5). It was to this applicant that the Commission awarded the contested authorization.

On the very same day on which the Commission published its instructions to its staff to prepare a decision granting the Moline application, it released its decision in Suburban Broadcasters, 20 RR 952, aff'd sub nom., Patrick Henry v. Federal Communications Commission, ___ U.S. App. D.C. ___, 302 F.2d 191 (1962). In that case, as this Court is aware, the Commission denied an uncontested application because the applicant failed to take appropriate steps to ascertain the needs of the community which it proposed to serve. This was the first instance in which the Commission took specific action which indicated the prime importance of its Policy on Programming.

A week after the decision in Suburban Broadcasters, the Commission adopted a Notice of Further Proposed Rule Making in Docket No. 13961, proposing to amend Section IV (Programming) of the application forms for new stations, renewals and transfers of the licenses of existing stations. The proposed section, if adopted, will require that applicants submit a statement of (a) "The efforts made by the applicant to ascertain the needs and interests of the public within his community or metropolitan area" and (b) "[T]he scope of consultations

by the applicant with civic leaders . . . with respect to the public service needs of their agencies, organizations or groups." (Pike & Fischer Current Service, p. 98:30.) If adopted, this proposed rule would make an absolute requirement of the present evidentiary criterion of community contact. But whether adopted or not, the rule is certainly a sign of the great importance the Commission attaches to community contacts. The proposed regulation was issued July 6, 1961, after the instant case was argued and after the announcement of the vote in favor of Moline, but before the case was finally decided.

In a third major pronouncement on local contacts the Commission, six days after Suburban Broadcasters was decided, gave only a limited one-year renewal of its license to a station which had departed from its proposed programming without demonstrating that any change in community needs had evoked such a response. KORD, Inc., 21 RR 781. The opinion clearly affirmed the great importance of community contacts and was based on the Commission's Policy on Programming. The Commission considered the principle of community contact so important that it distributed copies of the opinion in the KORD case to all licensees.

The decision in the instant case is utterly inconsistent with and in violation of the policy expressed in the Policy on Programming, the proposed rule of July, 1961, and these two recent cases. This becomes clear from an examination of the facts as found by the Commission itself.

The activities of Moline in connection with ascertaining its community's tastes and needs were set forth in the Initial Decision (32 F.C.C. at 1058-1059), in Findings of Fact which were not altered by the Commission. Those Findings reflect that the Moline stockholders were aware that the other applicants would conduct surveys of the area, but believed that they, themselves, possessed sufficient knowledge of the area, by virtue of their long residence in the area and their own

activities in various civic, cultural and charitable organizations, so that they had no need to make a survey of needs and desires by talking to members of the community. On advice of Washington counsel, however, they initially decided that it would be sufficient to conduct conversations with representatives of various local organizations to secure commitments of cooperation in their station's proposed programming. After about a dozen such conversations, even these extremely limited "contacts" were abandoned, because they believed that the necessary lapse of time before Commission action would alter any plans that could be made, and because the stockholders were certain that they would receive civic cooperation if their station were to commence broadcasting.

It should be noted that even these dozen or so "contacts" were not made in order to ascertain the needs or tastes of the community, but merely to secure promises of future cooperation from certain local groups. The Moline program proposal was designed solely on the basis of the stockholders' purported knowledge of the community, based on their own residence and activities there.

Moline's expectations concerning the activities of the competing applicants were entirely accurate. Each of the other applicants made extensive and assiduous efforts to determine the needs and tastes of the community and service area which it proposed to serve. These efforts are also summarized in the Initial Decision in Findings of Fact which were not essentially altered in the Commission's decision.²

² The only changes made by the Commission concerned the Examiner's Finding (32 F.C.C. at 980) that Tele-Views relied upon the experience and talents of persons in virtually all significant areas of community and area activity whom it contacted (ruling on Community Exception 14, 32 F.C.C. at 935), and it found in addition that the written or personal contacts of Community, Tele-Views and Illiway were to a considerable extent actually completed after the filing of their respective program proposals (ruling on Moline Exceptions 18, 19, 28, 53, 32 F.C.C. at 937). Appellants do not concede the validity of these Commission rulings. However, these rulings do not affect the basic contention made herein, since even under these rulings it is clear that numerous "contacts" were made and considered prior to formulation of the program proposals (see, e.g., 32 F.C.C. at 958).

These findings show that Community assigned to each of its stockholders (all of whom are local residents) various civic, community, agricultural, educational and other organizations, groups and persons not only in the Quint Cities, but throughout the entire service area, who were interviewed personally prior to completing Community's program schedule in order to explain to them Community's television plans and to solicit suggestions from them as to how the station might best serve their needs and interests. Programming suggestions were recorded on written forms for incorporation in the applicant's proposed programming. After descriptions of the format and contents of Community's proposed local programs were completed, they were given to the stockholders who made a second canvass of all persons and organizations previously contacted. Each person interviewed was asked to review the written report of the first visit, as well as the program descriptions, and was asked to make further suggestions. These second interviews were recorded in writing, discussed at stockholders' meetings and turned over for incorporation in the final program descriptions. In all, Community conducted over 300 personal interviews and directed letters to approximately 700 individuals or groups. (32 F.C.C. at 958-959.) Tele-Views not only retained a special television consultant, but made numerous contacts with persons in virtually all significant areas of community and area activity in order to secure the benefits of their experience and talents (32 F.C.C. at 980). Most of Midland's stockholders (some of whom were local residents) participated in an extensive canvass of the proposed service area, contacting 454 persons or organizations, including school principals and superintendents, farmers, 4-H groups, the Farm Bureau, local talent, religious and other organizations (32 F.C.C. at 1014-1015). Illiway is more than half owned by residents of the Quint Cities area, but nevertheless, its local stockholders spoke to as many community leaders as possible about the kinds of programs it should present, and four to seven forms of letters were prepared and sent to important

citizens and organizations for sounding out their opinions on different types of programs (32 F.C.C. at 1033, 1034).

It thus appears that the Commission, in finding that there were "no significant differences" among the applicants with respect to the planning of their program proposals (32 F.C.C. at 925), equated the bare local residence of some of the Moline stockholders³ with the assiduous efforts made by the other applicants, all of which also included local residents with outstanding records of civic activity, to ascertain as carefully and precisely as possible the needs of the area which is to be served. That this is the effect of the Commission's decision in the instant case is clearly demonstrated by a subsequent Opinion of the Commission's Review Board in Bootheel Broadcasting Co., 24 RR 292. In that case, the Review Board, which is bound to follow, rather than create Commission policy, stated that although it is not uncommon for applicants to make surveys of communities they propose to serve in order to ascertain community need, it is not essential that they do so because knowledge of such need can be acquired as a result of existing or recent long-time local residence, and the Commission's opinion in the instant proceeding is cited as authority for that proposition (24 RR at 294).⁴

³ Several of the Moline stockholders, who represent 25% of the Moline stock, including Schreiber, its President, are not and have never been residents of the Quint Cities area (32 F.C.C. at 1041-1043, 1047). Two of the three persons responsible for preparation of its programs are non-local (32 F.C.C. at 1053).

⁴ It should be noted that the result of the Bootheel case is in no way inconsistent with the position urged herein by appellants. That case involved not a determination in a comparative proceeding, but a request to enlarge the issues in a non-comparative case. It is significant that the request to enlarge the issues was made by the Commission's own Broadcast Bureau. The Review Board refused to add an issue to determine the efforts made by the applicant to ascertain the tastes and needs of the community because the applicant was not only a resident but had also spoken personally with 113 persons in the community and by telephone with an additional 100. Moreover, even under these circumstances the Chairman of the Review Board dissented from the Decision on the ground that the opinion placed too narrow an interpretation on previous Commission rulings.

This determination — that local residence can substitute for the "diligent, positive and continuing effort" to discover the tastes and needs of the community — is in square conflict not only with the express language of the Commission's Policy on Programming, but also with the manner in which the Commission has applied that policy. In its Decision in the instant case (33 F.C.C. at 925), the Commission attempted to distinguish Suburban Broadcasters, 20 RR 952, aff'd sub nom. Patrick Henry v. Federal Communications Commission, ___ U.S. App. D.C. ___, 302 F.2d 191 (1962), and KORD, Inc., 21 RR 781. Both of these previous cases are indeed distinguishable on their facts. In the Suburban case, the applicant was not a local resident and made no effort whatever to familiarize himself with the needs of the community to be served. KORD involved an application for renewal of license by an existing licensee, so that technically a different situation was presented from that of an applicant initially seeking a broadcast authorization. But the basic policy of those two decisions is fully applicable to the instant proceeding, as is demonstrated by still another Commission determination in a very carefully considered Decision which was released about two months after the Decision in the instant case. That case is Herbert Muschel, 23 RR 1059.

The Muschel case originally involved three mutually exclusive applications for a new FM station to be located in New York City. Of the two applications which remained by the time the Commission itself considered the matter, one, that of Muschel, was by an individual long-time resident of New York City, and the other, that of New Broadcasting Co., Inc., was by the licensee of a standard broadcast station which had operated for many years in New York City. The original hearing resulted in an Initial Decision granting the New application, and the record contained extensive evidence of the participation by its owners and management in the daily affairs of civic and other groups which represented the interests of the minority audience for which the

program proposals were designed. Nevertheless, after oral argument before it, the Commission remanded the matter for a further hearing to determine expressly "what efforts the applicants took to discover the tastes, needs and desires of their proposed communities or service areas, for the type of broadcast service proposed" (20 RR at 902). The Commission's ultimate decision granting the New application establishes conclusively that in a comparative proceeding an applicant, even though generally familiar with the nature of the community he proposes to serve, must suffer a very substantial demerit if he has not made a serious additional effort to ascertain the precise needs and tastes of that community. The Commission concluded (23 RR at 1066):

Muschel and [New] have each demonstrated a familiarity with the New York community and have made more than a superficial effort to determine its need for the program service he offers.
(Emphasis added.)

That every word of this conclusion is meaningful, and that "more than a superficial effort to determine" need is required even of applicants who reside in and are familiar with the community, is clearly established in the Muschel case not only by the Commission's remand for a further hearing in light of the facts which were already before it, but also in its Opinion in which the Commission stated (Ibid.):

Of course, one who makes no more than the bare minimum of investigation, or who too narrowly limits the scope of his programming efforts, must assume the risk of suffering serious demerits thereby in a comparative hearing on his application.

The above conclusion [that not all needs in so large and complex a city as New York need be investigated] should not, however, be construed as an abandonment of the desideratum set forth in our 1960 Programming Policy Statement (FCC 60-970), 20 R.R. 1901; i.e., "documented program submissions prepared as the result of assiduous planning and consultation covering two main areas:

First, a canvass of the listening public who will receive the signal * * *; second, consultation with leaders in community life * * * who bespeak the interests which make up the community." Neither should this conclusion be taken to mean that once having established a need, the applicant achieves parity with respect to competing applicants who have identified greater needs.

The failure of the Commission to apply its Policy on Programming in the instant case in the manner required not only by the policy itself, but in the manner in which the Commission applied it in Muschel, constitutes clear error under this Court's mandate in the Sunbeam case, cited supra.

In distinguishing the instant case from Suburban, the Commission stated that, "Moline's efforts, as shown upon this record, were sufficient." (32 F.C.C. at 925.)⁵ As has been noted, the dozen or so abortive contacts which were made by Moline stockholders were not to determine needs or tastes, so that the Commission could not have had reference to these in its quoted conclusion.⁶ The only other information on which the Commission's determination could have been based appears in the Initial Decision in that portion which describes the preparation of the Moline proposals (32 F.C.C. at 1050-1059). The contribution of each stockholder is therein described, with particular reference to his area of personal interest and its relationship to the programming proposal. Thus, for example, Meredith H. Davis, a resident of a farm area, recommended that the station publicize, and carry on a live basis, fairs and cattle sales (32 F.C.C. at 1054). Robert M. Harper, the majority stockholder of a weekly newspaper,

⁵ That this Conclusion is inconsistent with other portions of the Commission's Decision is shown in Point III, infra. The Commission, in ruling on Exceptions, held that the "plan," not the "effort," is the significant factor (32 F.C.C. at 936).

⁶ The Bootheel opinion also affirms that the Commission's conclusion was not based upon these few "contacts."

was thereby aware that the East Moline Community Festival, previously an outstanding event in the area, was no longer in existence, and he concluded and informed the remaining stockholders that the needs and interests of the area do, in fact, change. He originated the notion that the station should adopt editorial positions (32 F.C.C. at 1054-1055). Harry McLaughlin, whose background was not stated, impressed the directors with the need to serve all races, creeds, and religions (32 F.C.C. at 1056). William J. Dowsett, who was Chairman in 1954 of the River Filtration Plan, learned from this activity and the growth of East Moline that any station which wants to do a good job of serving the public must concentrate on the desires of the people as those desires become important (32 F.C.C. at 1054).

Mr. Dowsett's conclusion should have led Moline to make an effort to determine the current needs of the service area, and should have put the group on notice that its policy not to consult the community was erroneous. It did not. The material set forth with respect to the individual stockholders makes it abundantly plain that each stockholder brought to the corporation his own personal, undocumented and subjective views concerning needs in which he personally had an interest. If this were sufficient, there would have been no need for the remand in the Muschel case, and, indeed, there would be little need for the Commission's Policy on Programming. If the Commission intended that long residence was to take the place of a serious effort to determine community needs, both its Policy on Programming and subsequent decisions could and would have plainly so stated. It is clear that the Commission's Policy was promulgated mainly because the Commission requires more. The entire thrust of the Commission's Policy on Programming is that applicants and licensees may not rely solely on their own knowledge, personal backgrounds, or predilections in attempting to devise program proposals which will serve the public interest; each applicant and licensee is required to make an additional serious effort to ascertain the community's needs and tastes.

The Commission's failure to apply its Policy on Programming in the instant proceeding is particularly striking in light of the attempt made by appellants Community, Midland and Illiway to call the Commission's attention to the problems raised in the instant case. On July 21, 1961, these appellants filed a motion for reargument on the grounds that the Commission's Order directing that an opinion be written in favor of Moline was inconsistent with its policy in this area (R. 5726-5742). Appellants argued at some length that since the Commission was attaching such importance to programming and the ascertainment of community needs it should not allow the decision in this case to weaken the new policy. The Commission refused consideration of this motion on its merits, finding it an extraneous pleading made on the basis of a non-final order (R. 7508-7509). But the Commission cannot deny that it had before it the full implications of its decision and yet still refused to clarify its inconsistent action.

Appellants carried out far-reaching and carefully planned programs of local contacts in addition to the knowledge of needs which they possessed through their local stockholders. Moline refused to have anything to do with community contacts, sought only to denigrate the criterion, and did not demonstrate that it had in fact used the knowledge of its local stockholders or that it had arranged any formal way of using this knowledge in the future. Yet in the face of its recent pronouncements and cases on its policy in regard to ascertaining and meeting community needs, the Commission found that the efforts of Moline were sufficient and, indeed, equal to those of appellants, thus depriving appellants of a decided preference over Moline in this area otherwise recognized to be of such prime importance by the Commission.

II. THE COMMISSION'S UNREASONED INFLATION OF BROADCAST EXPERIENCE, MAKING IT THE DECISIVE CRITERION IN THIS CASE, WAS ARBITRARY AND CAPRICIOUS, ESPECIALLY BECAUSE SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD DOES NOT EVEN JUSTIFY A PREFERENCE FOR MOLINE IN BROADCAST EXPERIENCE.

In the paragraph of its opinion entitled Conclusion (32 F.C.C. at 931) the Commission concluded that although individual appellants made a better showing than Moline in the areas of integration, local residence, and diversification of mass media, the differences between Moline and appellants on these criteria are slight and of insufficient weight to overcome what was determined to be the superiority of Moline in the area of broadcast experience. Appellants take issue both with the Commission's premise that broadcast experience, per se, should or can be determinative, outweighing preferences for appellants in virtually every other contested area, and with the Commission's assumption that Moline has in fact shown superior broadcast experience.⁷

A. The Commission Made No Attempt to Explain the Basis for Its Selection of Broadcast Experience as the Determinative Criterion.

Although reviewing courts have repeatedly stated that the weight to be given to individual criteria, in particular cases, is a matter for the Commission's discretion, they have always required the Commission to explain why it considers one set of preferences as superior to

⁷ An analysis of the Commission's decision shows that Moline was found to be in third place on the criteria of local residence and integration; that three other applicants shared a preference over Moline in the area of diversification of the media of mass communications; that Moline shared a slight preference with two other applicants over the remaining two on the fairly unimportant criterion of diversification of business interests; that it shared a preference with three other applicants over the fifth applicant in the area of civic participation; and was on a par with all other applicants on planning, studios, staff and other factors. The only area of comparison in which the Commission found a clear-cut preference for Moline over all other applicants was in that of broadcast experience.

another in any individual case. See, e.g., Tampa Times Co. v. Federal Communications Commission, 97 U.S. App. D.C. 256, 259, 230 F.2d 224, 227 (1956).

The Commission has held in this case that broadcast experience is determinative, but it has not given one line of explanation for this ultimate conclusion. The only reason for this result which is discernible from the opinion is the bald and unexplained assertion that Moline's strong preference in broadcast experience is entitled to greater weight than all the preferences accorded appellants in other areas. But the Commission itself has again and again repudiated the validity of any such short-circuit use of the criteria. Rather, it has asserted that judgment must be on the basis of all the variables, giving each criterion its explained weight in light of facts. Reviewing courts have approved this use of the standards (Scripps-Howard Radio v. Federal Communications Commission, 89 U.S. App. D.C. 13, 16, 189 F.2d 677, 680 (1951), cert. denied, 342 U.S. 830):

The guiding standards, however stated, must in the end be translated into those of the statute, namely, the "public convenience, interest, or necessity" [citing statute]. Superiority of one applicant over another in one or more phases of qualification or operational ability does not necessarily constitute superiority under the statutory standards. Nor may the Commission or the reviewing court simply add up the factors as to which each is superior and decide according to the numerical result. This would eliminate the exercise of judgment as to where lies the greater public interest [citing cases]. There must be a weighing of the relative importance of the several factors involved. (Emphasis added.)

The Commission's decision cannot be affirmed if it was merely the arithmetic result of several "slight" preferences failing to equal one "substantial" preference. But if this is not the situation here a reader cannot tell upon what principle the case was decided. It is only necessary to compare this decision with past Commission decisions to

witness the collapse of reason here. In other decisions the Commission has explained both the substantive basis for the criteria being used and the reasons for according them the weight afforded in the specific case. For example, in Petersburg Television Corp., 10 RR 567, aff'd sub nom. Southside Virginia Telecasting Corp. v. Federal Communications Commission, 97 U.S. App. D.C. 130, 228 F.2d 644 (1955), cert. denied 350 U.S. 1001, the Commission decided that the past record of one applicant was more important than the criteria in which the other applicant excelled. Unlike its procedure in the present case, the Commission did not make this decision by an unexplained pronouncement, but carefully reasoned in this fashion (10 RR at 584 (1)):

While a past record of the foregoing nature is the important consideration here — being an actual demonstration of a party's likelihood of carrying out his programming commitments and of being sensitive to the area's needs, the presumptive factors (local residence, participation in civic affairs, and integration of ownership and management) are not to be discarded: They are relegated to a minor role Their continued significance stems from the assurance they give — albeit it is a presumption — of continued insight into the area's changing needs

The Commission in the Petersburg case then examined the "presumptive factors" carefully, and found that though one applicant was superior in this regard, that superiority was cancelled by its complete ignoring of the programming needs of part of its proposed service area. Thus, in the end, one criterion outweighed several others, but no doubt or confusion was left about the public interest reasons for this result. Cf. also Television East Bay, 14 RR 1.

The Commission has in this case abandoned its duty to explain why it found one criterion more persuasive than others. This Court has, however, made clear the Commission's obligation to do so in Pinellas Broadcasting Co. v. Federal Communications Commission, 97 U.S. App. D.C. 236, 230 F.2d 204 (1956), cert. denied, 350 U.S. 1007,

when it specifically passed on the contention that the Commission had given too much weight to one criterion. The Court upheld the Commission's decision, but it did so on the ground that the Commission had clearly articulated the basis upon which it exercised its administrative discretion in choosing one criterion over another. Only by requiring such reasoning from the Commission can this Court play its proper part in assuring that the use of criteria does not become an elaborate shell game, hiding rather than serving, the decisional process. See Friendly, The Federal Administrative Agencies: The Need for Better Definition of Standards, 75 Harv.L.Rev. 1055, 1064 (1962); Jaffe, The Scandal in TV Licensing, Harpers Magazine, Sept. 1957. The Court's comments in Pinellas, supra, are directly relevant (97 U.S. App. D.C. at 238, 230 F.2d at 206):

The decisive factors in comparable selections may well vary; . . . And it is also true that the Commission's view of what is best in the public interest may change from time to time. . . . in so doing it is operating within the areas of legislative-executive judgment. The courts cannot interfere so long as the process, the premises, and the judgment are not arbitrary. . . . But it may sometimes be that the supporting philosophy of a general policy on such matters is so obscure as to require explanation. In such a case if the conclusion is challenged as arbitrary, it would seem that the court, in the process of adjudicating that issue, can require a statement of the premises for and the reasoning toward the general policy. (Emphasis added.)

As will be demonstrated below, the choice of broadcast experience as the decisional keystone in this case is peculiarly "obscure" and, though the Commission may have the power to conclude that broadcast experience is decisive, the exercise of that power in a case such as this without explanation is arbitrary in the extreme.

B. The Criterion of Broadcast Experience Alone Cannot Bear the Weight of the Whole Decision Because Such Experience, Without More, Creates Only a Limited Presumption of Capacity to Perform.

In the performance of its complex task of selecting the most qualified from among a number of applicants, the Commission has formulated certain basic historic criteria, which it uses as flexible decision indicators. Generally, these criteria are: Proposed programming and policies, broadcast experience, record of past broadcast performance (which while a separate factor is closely related to broadcast experience), local ownership, integration of ownership and management, participation in civic activities, relative likelihood of effectuation of proposals as shown by study of local needs through contacts with local groups, carefulness of operational planning, including staffs, studios and equipment, diversification of control of the media of mass communication, and diversification of the business background of the personnel of the applicant.

Each of the criteria was selected because of its relationship to the Commission's overall mandate to choose an applicant to serve the "public interest, convenience and necessity." It has been said many times that the criteria overlap or conflict, that they are not necessarily of equal importance, and that they are not exhaustive. Inadequate as they may be, the criteria have been the basis for Commission decisions, and have acquired a content through these decisions. It is therefore possible in a particular case for a reviewing court to judge the correctness of their application. This judgment must take into account the Commission's necessary discretion in applying the criteria, but the Commission may not exceed its legitimate discretion and act arbitrarily by using the criteria in such a way that they become rationalizations for decisions rather than their true bases. Appellants contend that in the instant case the Commission did act arbitrarily in this fashion, and that this Court must exercise its supervisory powers

over the administrative process to assure that the Commission uses the criteria as true guides, rather than disguises, for its decisions.

To a large extent, the opinion in this case is based upon the alleged superiority of Moline in broadcast experience. The Commission states that other criteria are significant, but it finds the differences among the applicants either small or unimportant in other areas. Even a casual reading of the opinion leaves little doubt that Moline prevailed not because of a good showing on every criterion, or upon several criteria plus a superb showing in broadcast experience, but only because the showing in all other areas was considered ~~totally~~ unimportant as compared to the showing in broadcast experience.⁸

Appellants contend that the broadcast experience criterion alone cannot bear the great weight the Commission has put upon it; broadcast experience per se cannot validly account for the whole decision, especially under the circumstances of this case.

⁸ The Commission said that its decision for Moline is "On the basis of the showing made by each of the applicants under the various criteria" (32 F.C.C. at 931), but the decision itself reveals this is not so. The decision was on the basis of the showing made in broadcast experience, as dissenting Commissioner Ford recognized when he said (32 F.C.C. at 938): "* * * the decision accords to the criterion of broadcast experience an importance which I feel would be erroneous even if a substantial margin of superiority were shown to exist."

The Commission used various methods to justify the importance it ultimately attached to broadcast experience. In its discussion of civic participation and local residence, where Moline was found wanting, the Commission derogated the value of these criteria. In both these areas, the Commission found that a good showing was unimportant because such a showing was based purely on the number of people involved. (32 F.C.C. at 926-927.) It found that all applicants except Midland were equal in civic participation, Midland suffering because 67% of its stock was owned by non-residents and only its 33% minority stockholders had a record of civic activity in the Moline area. Yet, the Commission failed to consider that Moline's President and General Manager, Schreiber, a resident of Chicago, demonstrated no record of civic activity anywhere, while its other Chicago stockholders, Messrs. Parsons and Thomas, have no record of civic activity in the Moline area. Together these three, Schreiber, Parsons and Thomas, hold 25% of Moline's stock (32 F.C.C. at 1041-1042).

Through the combined process of de-emphasizing other criteria in one way or another, and of spending the bulk of the opinion on broadcast experience, the Commission rested its decision on this single criterion — as is apparent to any reader.

1. Broadcast experience of principals has never before been held to be a decisive criterion. A search of past precedents reveals no other case in which it was the sole basis for the award of a station.⁹ Rather, as one of the Commission's most experienced Hearing Examiners points out, broadcast experience has served mainly as a useful index of "capacity to serve." Irion, FCC Criteria for Evaluating Competing Applicants, 43 Minn.L.Rev. 479, 483 (1959). If an applicant's principals have in the past worked in broadcasting, this increases the likelihood that they will be able to carry out the proposed programming. But broadcast experience alone reflects no qualitative value; it does not indicate that the experience was productive of superior or mediocre results. On the other hand, information on the quality of performance of an individual, where available, is a persuasive indicator of the value of the experience. A person may have much experience but a poor record. The quality of performance or past broadcast record thus bears directly not only on the applicant's capacity to perform in the public interest, but also on his willingness and likelihood to do so.

⁹ Pike & Fischer Radio Regulation, the only reporting service collecting and digesting Commission decisions, has above its digest of cases discussing the criterion a note which says: "In most cases, broadcast experience is not a determinative factor, being given weight when the applicant is preferred for other reasons but minimized as a factor where there are other reasons for preferring a competing applicant." Pike & Fischer Radio Reg. Digest, M-2151. In the cases in which broadcast experience played an important role, it was always a part of a larger complex of criteria, which all taken together, were found to outweigh the usually more weighty "local interest" criteria of local ownership, integration, and civic participation. See, e.g., Indianapolis Broadcasting, Inc., 12 RR 883, 950:

"In closer circumstances of comparison, [Crosley's] lack of local residence and civic participation might prove a serious obstacle. Here, however, we have noted the extensive experience in broadcasting which is associated with the principals of Crosley, and the association of that applicant with the broadcast industry, virtually since the inception of the industry . . . We have seen the manner in which this experience will be translated into the initial phases of operation of the proposed Indianapolis station; we have been shown the special services of the Crosley organization . . .; and we have seen that a substantial amount of independence is given to the . . . Columbus station We have also had the opportunity to observe in detail the past record of operation of the several television stations owned and operated by . . . it. We have found the record of Crosley's pioneering efforts . . . good . . ." (See also, St. Louis Telecast, Inc., 12 RR 1289, 1390 et seq.)

See WHDH, Inc., 13 RR 507, aff'd sub nom. Massachusetts Bay Telecasters, Inc. v. Federal Communications Commission, 104 U.S. App. D.C. 226, 261 F.2d 55 (1958), and remanded on other grounds. In fact, the Commission has often said that a preference for the quality of past performance may outweigh other preferences in a particular case. See, e.g., WJR, The Goodwill Station, Inc., 9 RR 227, 260 c-d. However, such a prominent place among the criteria cannot be accorded broadcast experience alone, which indicates so much less.

At its strongest, therefore, the presumption from broadcast experience is only that the applicant's principals have the capacity to perform as promised. At its weakest, this ability may not even be present. Willingness, and motivation to perform, may only be properly inferred from other evidence and criteria which bear on the applicant's connection with the service area, identification with its interests and record of performance. Sarkes Tarzian, Inc., 17 RR 905; Toledo Blade, 15 RR 739, 822, 828-29, reconsidered and affirmed 15 RR 836 (b), aff'd sub nom. Great Lakes Broadcasting Co. v. Federal Communications Commission, 110 U.S. App. D.C. 88, 289 F.2d 754 (1960). Because, at best, it proves a limited proposition of "capacity," broadcast experience alone cannot validly be the sole basis for a comparative decision granting a construction permit.

2. Although broadcast experience may be important, it cannot alone reasonably outweigh other equal or more significant criteria. As Commissioner Ford's dissent points out, citing apt cases, broadcast experience, as such, is less relevant because its lack is quickly overcome by the passage of time. Moreover, undue stress on broadcast experience prevents newcomers from entering a field where new ideas are sorely needed. Appellants also agree with the dissent in its third observation that broadcast experience is even less important when there is really no substantial difference between the applicants in broadcast experience, while there are differences in other, more weighty areas of comparison.

C. The Commission's Preference of Moline Over Appellants in the Area of Broadcast Experience Is Not Supported by Substantial Evidence on the Whole Record.

1. The differences in experience among the applicants was not so significant as to be decisive.

Whatever may be the value of broadcast experience per se and its possible use as a decisive factor or criterion, its use in this case was unreasonable and contrary to the whole record since the Commission could not properly find that the differences among the applicants were so great that Schreiber's experience could render that experience decisive. The Commission's determinations on experience must meet the substantial evidence test set forth in the Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 1001, § 10 (1946), and further articulated by the Supreme Court in Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474. In this case it is clear that they do not meet the test.

There is no dispute about the experience of all the parties. The examiner's findings of fact on the experience of the principals of each of the appellants were adopted by the Commission (32 F.C.C. at 930).

a. Mark Wodlinger (Community) (32 F.C.C. at 944-946)

Mr. Wodlinger, Community's Executive Vice President and proposed general manager has been in broadcasting since 1948. In 1949, he became a salesman for station WOC-TV, located in Davenport, across the river from Moline. In 1950 he became sales manager for both WOC-AM and TV, a position which he held until October 1, 1958, when he resigned to assume full-time duties with Community Telecasting Corporation. In this capacity Mr. Wodlinger actively participated in putting WOC-TV on the air and worked with the station's program director in the actual program operations.

Mr. Wodlinger participated in the formulation and preparation of programs and program formats. As a result of his sales work he also

made and participated the making of many programs and local commercials, remote and otherwise. Thus, for several years Mr. Wodlinger participated in the actual production of the Salvation Army "Tree of Lights" charity telethon show, working in various production capacities. He assisted in working out the arrangements for a series of programs in cooperation with the State University of Iowa. He also made all of the arrangements and auditioned and obtained talent for several Barn Dance programs on WOC-TV. Similarly, he worked out the arrangements and auditioned talent for a series of 3 per week 1/4-hour live music shows. He also arranged for a series of appearances on WOC-TV of the opera singer, Marguerita Roberti. He sold, and arranged the details for, a 26 week 1/2-hour show for the Illinois Agricultural Association and made various arrangements for WOC-TV's "Rural Roundup" show. He has also handled publicity and non-commercial spot announcements on both radio and television in the Moline area for the Heart Association, Red Cross and other civic and community service organizations. These are just some of the programs he developed. His experience is described at length in the examiner's findings.

Over the years Mr. Wodlinger handled WOC-TV's television network negotiations and station relations with the ABC Network, with which Community proposes to affiliate if granted. He also had charge of all clearances of NBC television shows on WOC-TV and handled the major portion of all television film buying for the station since its inception, dealing with the distributors of both feature and syndicated films. As sales manager at WOC-TV he was also responsible for the hiring and supervision of the salesmen and sales promotion manager; supervised the Traffic Department; and was responsible for recognizing policy problems in sales and other fields of station operations, analyzing them and presenting them to the executive vice-president for decision.

- b. Leslie, Frank and Harriet Atlass (Midland) (32 F.C.C. at 994-996, 998-1001)

The three Atlasses control Midland, and will be its operating heads and principal executives. Leslie Atlass has been active in broadcasting since 1945. In that year he was employed by the Columbia Broadcasting System in Chicago as head of its Television Department, later becoming a local salesman for WBBM (AM) in Chicago when activities in connection with the CBS Television Department were suspended. He was employed at WBBM (AM) until 1948. In February 1948, Mr. Atlass was employed at Radio Station WIND in Chicago as program director, a position he held until the facility was sold to Westinghouse in December 1956. From September 1953, until December 1956, he was also treasurer, a director, and a stockholder of WIND, Inc.

Frank Atlass, II, proposed program manager of Midland, joined the Columbia Broadcasting System in March of 1950. He has worked in various departments and divisions of CBS in Chicago, including sales promotion and as an account executive in connection with local sales at WBBM and WBBM-TV. He has also acted as producer, writer-producer, and executive producer, as well as program manager at WBBM-TV. At the time of the close of the record, Mr. Atlass was sales manager of WBBM-TV. Mr. Atlass produced, and in certain cases wrote and produced, a weekly half-hour television presentation on the CBS network entitled, "Susan's Show." In his capacity as program manager at WBBM-TV in Chicago, he was responsible also for the daily programming schedule and all programming and production personnel. In this connection, he supervised all local shows with respect to preparation and presentation.

Mr. Atlass was one of the founders of the Chicago Chapter of the Academy of Television Arts and Sciences, an organization designed to advance the arts and sciences of television in fostering creative leadership in the television industry throughout the United States. In 1958, he was co-founder, first vice-president, chairman of the Executive

Committee, and a member of the Board of Governors. As a member of the U.S. Naval Reserve since 1950, Mr. Atlass travelled to Europe in 1957 to produce and direct a documentary recruiting film for the Navy. The film, entitled "Mediterranean Patrol," was made in cooperation with the Sixth Fleet, and Mr. Atlass received a letter of commendation for this film from the Under Secretary of the Navy.

Miss Harriett Jane Atlass, proposed Public Affairs Director for Midland, began her employment with CBS in 1955 in Chicago as a production assistant in the Program Department, serving as an assistant to the producer of various productions in such capacities as rehearsal timings, script preparations, programming arrangement, music clearances, the ordering of properties and scenery, and other activities. Miss Atlass later became the producer of the programs entitled "Shopping With Miss Lee," a daily 15-minute Women's service show; "Luncheon With Billy," a 15-minute daytime musical program; and a nighttime disc jockey show entitled "The Howard Miller Show," which was later changed to a variety program format.

Since 1956 or early 1957, Miss Atlass has devoted full time, creatively, to the public affairs field, dealing with only the highest class personalities and institutions, in religious, educational, and scientific fields. In the summer of 1956, Chicago was stricken with a polio epidemic. A portion of Miss Atlass's program "Shopping With Miss Lee" was devoted to the promotion of inoculations, the staff travelling with mobile units and working closely with the Board of Health. For this service, McCall's Magazine awarded Miss Atlass an award for outstanding service in that year. In 1957, Miss Phillip, talent, and Miss Atlass received a similar award for a series of programs entitled "The Unwed Mother, The Unwanted Child."

Miss Atlass has also produced various special interest shows from time to time. Illustratively, upon the death of Samuel Cardinal Stritch, the Catholic leader of the Chicago Archdiocese, a special

program entitled "Tribute to the Late Samuel Cardinal Stritch," was broadcast within two hours of his death. As the producer of this program, Miss Atlass received a "Distinguished Achievement Award for Television News Reports" from the Radio-Television News Directors Association and the Medill School of Journalism, Northwestern University. As a result, at least in part, of the efforts of Miss Atlass, WBBM and WBBM-TV have received a number of outstanding awards.

c. Joseph Baisch and John Mazzie (Illiway) (32 F.C.C. at 1018-1023, 1026-1027)

Mr. Baisch, Executive Vice President and proposed General Manager of Illiway, has had extensive operating experience in the film business and in the television business. In 1949 he was appointed general manager of Gran Enterprises, which served as management for a number of movie theatres and he also was an officer of that company.

During the television freeze, in 1950, as part of his duties for Gran Enterprises, Mr. Baisch became familiar with television and its operating problems in order to prepare himself to become a supervisory official in any television station in which Gran or his company might have an interest. He has been actively engaged in the television business since that time. He was employed in 1953 to assist in laying out, constructing, equipping and staffing WREX-TV, a new television station in Rockford, Illinois. In May 1954 he became general manager of Station WREX-TV and he has held that position until this time. He is executive vice president and a director of that station.

As general manager of Station WREX-TV, Mr. Baisch is completely responsible for, and supervises all of the activities and operations of the station. He is active in and participates on a day-to-day, full-time basis in each of the operations of the station which are roughly classified as programming, engineering and sales. He has

wide discretion and determines what programs will be presented and the content of the programs themselves; what programs will be sponsored or sustaining; which sponsors and continuity will be accepted; and he determines how the station shall be operated from the point of view of engineering and production. He has developed, at Rockford, programs which would serve the needs and interests of communities other than Rockford. He has participated in network contract negotiations and is solely responsible for the day-to-day relation of the station with the networks and the acceptance of network programs.

Mr. Baisch has had extensive experience in the selection and purchase of film for television and in developing the use of locally-produced film in regular local programming.

Mr. Baisch has had extensive experience in the creation and production of a wide variety of local live programs, including remotes. His participation in the creation of these programs is not merely supervisory; he is actively engaged in the creation of the ideas and their implementation. He is also responsible for the selection and supervision of the WREX-TV staff and he supervises the coordination of the different parts of the staff. The examiner made detailed findings on the nature of the WREX-TV programs (32 F.C.C. at 1030-1033).

Mr. Mazzie, proposed station manager of Illiway, also has had extensive operating experience in the television business, particularly in the creation, presentation and production of programs.

In October 1947, Mazzie went to work for Station WOW-TV in Omaha. He served as a prop boy, scenery technician, mike boom operator, set lights, pushed cameras, acted, assisted engineers in set-ups and tear-downs. In August of 1949, he was hired by WOW-TV as floor man. During his work with the station, he learned all aspects of the program operation of a television station. After serving as floor man, he was appointed a director, designing, producing, writing and directing live television programs. He had, before this time, learned

camera operation, film projection, lighting, staging, make-up, and all the other technical aspects of television production; he performed all of these duties from time to time. In 1952, he became executive producer of WOW-TV. In this capacity he supervised the production manager, and interrelated the production activities of the station with the sales and other departments. He worked closely with the program director in the creation and presentation of all programs. He worked for WOW-TV until August of 1953, when he joined WREX-TV as production manager. Early in 1954, he became program director of WREX-TV, and he has held that position until this time.

As program director at WREX-TV, Mazzie actively supervises and participates on a day-to-day basis in the activities of the production, art, film, news, sports, staging, traffic and continuity departments. He is directly responsible on a day-to-day basis for the actual creation and final production of all programs. His program ideas and plans are submitted to Baisch and, working closely with him, are integrated into existing program structure. He is responsible for the staffing assignments of the station.

d. Schreiber does not have greater experience than those described above.

The record shows that Schreiber has been in broadcasting since 1931. For ten years, from 1946-1956, he was general manager of Chicago stations WGN-AM and WGN-TV, and during that time he also served as director and treasurer, and in 1955-56, vice-president of WGN, Inc. Since 1956, when Schreiber — now 61 years of age — left WGN because of disagreements over policy, he has been completely out of the broadcasting business, and is presently owner and manager of a restaurant in the Chicago area. (Tr. 3027, 3035). This fact alone should raise grave doubts about Schreiber's experience. Television is a new, dynamic, growing industry of rapid advances and constantly shifting technology and techniques. Six years entirely

separated from these changes would surely lessen the value of an individual's experience. Indeed, one who has missed six years of television as of this date, 1962, has virtually missed "half the show" since it has only been in the past 12 to 14 years that television has come into its own. As found by the Commission, the record shows that while at WGN-TV Schreiber developed and presented certain local news, public affairs, music and educational programs. It found (32 F.C.C. at 929-930):

While at WGN, Schreiber stressed the development of local news coverage and public affairs programs. He developed a music staff, and presented live musical programs. A program for preschool children, presented by a representative of the Chicago Board of Education, was developed. Talks by authorities in the fields of agriculture and management were presented daily.

Community, Midland and Illiway urged below that, based upon the experience of its principals, recited above, they were entitled to a preference over Moline since the experience of their principals was greater than that of Schreiber,¹⁰ particularly in the program field. Whatever may be the merit of the refusal of the Commission to grant such preference to Community, Midland and Illiway, it is clear that as between the persons described above and Schreiber, the Commission could not on the basis of the record hold that the differences in experience justified a compelling and decisive preference for Moline over all other applicants. Moreover, even assuming, arguendo, that Schreiber's experience is superior in some degree to that of the other applicants, any such minor superiority is more than equalized by the fact that Schreiber has long been out of the broadcasting industry, while those with experience in the other applicants have remained and are active in the television field.

¹⁰ Tele-Views urged below, and continues to urge, that the broadcast experience of the various principals relied upon by the applicants, including particularly that of Schreiber of Moline, was of such a qualitatively inferior nature that decisional significance could not reasonably attach to that comparative criterion, regardless of which applicant was entitled to a preference thereunder.

The Commission failed to consider that Schreiber left WGN-TV after a policy dispute and has failed to re-enter broadcasting since, operating a restaurant in a Chicago suburb.

The Commission was here not dealing with a situation in which one applicant possessed experience and the others did not. Community, Midland and Illiway presented principals with considerable and unusual degrees of experience. Thus, even if it were assumed, arguendo, that Schreiber's experience was to some degree superior to that of all others, the limited qualitative and quantitative area in which superiority exists could not possibly or reasonably be considered so compelling as to outweigh all other criteria in the case. At most, it could, if supported by the record — which appellants do not concede — result in a slight preference for Moline in this one area of comparison to be weighed against the preferences found for appellants in other important areas of comparison.

To make Schreiber's experience the decisive factor in the case, outweighing all other criteria, was completely unreasonable and arbitrary.

D. The Commission Erroneously Failed to Consider the Poor Quality of Schreiber's Past Performance.

As we have pointed out above, only the weakest inference as to quality of performance may be drawn from experience alone; experience can produce a record that is good or bad. The Commission, however, evaluated Schreiber's experience without regard to the adverse factors in his performance as a broadcaster.

This was not because the record was barren on this question. On the contrary, appellants had squarely placed in issue Schreiber's performance and urged that it had to be considered in evaluating Moline's qualifications (see, e.g., R. 5564). At the same time Community, Midland and Illiway each placed in evidence facts relating to the superior quality of the experience of each of its principals for which it claimed credit. The Examiner in fact made express findings on the favorable performance of Wodlinger, the Atlases and Baisch and Mazzie (32 F.C.C. at 944-946, 994, 998-1001, 1030-1033), all of which were adopted by the Commission. Despite the clear record, the Commission refused to consider the facts

adverse to Schreiber and favorable to the others as bearing on the weight to be given to the experience of each.

This the Commission did although it has in the past held that a most persuasive indicator of the reliability of an individual is the quality of his performance in the operation of a station. In Radio Station KFH Co., 11 RR 1, 103-04,¹¹ the Commission held:

If an applicant has a past broadcast record, no more persuasive evidence can be found as to whether it can be relied upon to carry out its promises and remain sensitive to the listening needs of the public. For such a record is a tangible or actual demonstration of the applicant's reliability

Broadcast experience and record or quality of performance are thus intimately related to each other. While they are not identical (Toledo Blade Co., 15 RR 739, 825 et seq.), experience cannot be considered without considering its quality. The Commission has recognized this in the past and has consistently held that broadcast experience is "depreciated" by weakness in operation and it is "appreciated" by strength in operation. Toledo Blade Co., 15 RR at 822. Thus, in WHDH, Inc., the Commission said 13 RR at 569):

As with other experience, the broadcast experience accumulated through operation of stations whose records of performance are placed in evidence must inure to that applicant provided this experience, as represented by the management and integration proposals presented in the hearing, is to be carried over into the new proposal. (Emphasis added.)

Where in Toledo Blade an important principal had extensive experience, the value of this experience was expressly and substantially "depreciated" because of the poor quality of his past performance — almost identical in nature to that of Schreiber in this case. Toledo Blade Co., 15 RR 739, 822, 828-29.¹² See also Television Broadcasters, Inc., 17 RR 1169, 1202-06.

¹¹ Reversed on other grounds, 101 U.S. App. D.C. 164, 247 F.2d 570 (1957).

¹² The Commission stated "The value of Mr. Gross' contribution to [the appellant's] operation is substantially depreciated by the pronounced weakness in the operation of WJIM-TV . . ." (15 RR at 822; emphasis added).

As we have stated, appellants, during this proceeding, placed in evidence the broadcast record of Schreiber (see R. 5549-5551; 8200-8201). Appellants requested the following findings, all of which were required by the evidence cited in each instance (R. 8200-8201):

A comparison follows of WGN-TV's program proposals, in major program categories, prepared by Schreiber and filed as part of WGN's application for construction permit as amended in 1946 and 1947, and the station's performance record as set out in its first renewal application filed in 1951 (signed by Schreiber as Treasurer)(Tr. 3058-70):

	<u>Proposal</u>	<u>Performance</u>
Education	7.14%	2%
Religious	3.57%	0%
Agriculture	5.36%	0%

This same 1951 renewal application reflected only 20 non-commercial spot announcements, and proposed no religious programming, no agricultural programming and only 1% discussion programming (Ibid). The Commission deferred action on WGN-TV's renewal because of the absence of past religious programming and the fact that none was proposed for the future (Tr. 3076, official notice, Tr. 3083). WGN-TV's renewal was granted after it amended its application to propose 1 3/4% religious programming (Tr. 3083).

WGN-TV's 1952 renewal application, again signed by Schreiber, proposed 3% religious, and 3% educational programming. However, its 1953 renewal application, again signed by Schreiber, reflected a performance of 1.4% religious and 1.5% educational programming (Tr. 3084-86). WGN-TV's license renewal was deferred a second time in 1954 on the ground that it was insolvent (Tr. 3087-88). While Schreiber was manager at WGN-AM-TV, the station also used per inquiry, mail order advertising, and some commercials which Mr. Schreiber said could be termed "pitch" commercials (Tr. 3126-36; see also Tr. 3229-30; 3232-36). WGN-TV was not an NAB Code member under Mr. Schreiber's management (Tr. 3245).

Mr. Schreiber left his position at WGN in 1956 at the request of the management after disagreement with them on staffing policy matters (Tr. 3029-32; 3227). He has not been and has not attempted to get back in the broadcasting business since that date (Tr. 3027-29; 3032-35; R. 4588-92). Since leaving the broadcasting business, Mr. Schreiber has held several different jobs for short periods

of time, i.e., with the Brotherhood of Electrical Workers for 5 months, with a savings and loan association for approximately one year, and became the owner, with his wife, of a restaurant in May of 1957 (Tr. 3032-36).

The Commission refused to make the findings requested or to consider the facts recited on the ground that these facts were not of "any decisional significance." See Ruling on Community Exception 130 and Illiway Exception 29, 32 F.C.C. at 935, 936. The Commission opinion also stated (32 F.C.C. at 925): "None of the applicants has a broadcast record, and the minority interests which various stockholders of some of the applicants have in broadcast stations do not provide any basis for comparison in the area of broadcast record." This statement, however, was related to the contention which had been made by one of the parties (R. 8206-8207) that the record of performance of Schreiber was required to be given independent consideration in this proceeding. The statement of the Commission was not, however, responsive in any way to the separate contention made by both Community and Illiway that even if the record of performance of Schreiber would not be given independent weight, the poor quality of Schreiber's performance was required to be considered in evaluating Schreiber's experience (R. 5549-5551; 8230-8231).

The Commission gave full weight to the pluses in Schreiber's experience, reciting the programs he developed and indicating that it approved of their quality and value (32 F.C.C. at 929-930). Having done so, it was required to consider the demerits resulting from his experience. This is not a case where the Commission considered the adverse facts and found them to be entitled to little or no weight. It is a case where the Commission did not consider the "cons" though it considered the "pros." Schreiber was responsible for the programs of WGN-TV and was its General Manager. The Commission was therefore required to weigh the facts described above, which reflected adversely on Schreiber's experience. It certainly could not make his experience decisive in this case without considering the poor quality of his performance.

III. THE COMMISSION'S DECISION FAILS TO STATE ADEQUATELY "THE REASONS OR BASIS" FOR ITS CONCLUSIONS.

An essential limitation on the power of all administrative agencies is that they must articulate with clarity the basis for their decisions. Only when the process of decision-making is clearly stated in the opinion can the Commission ". . . proceed with certainty upon its tasks, the courts . . . perform their review functions . . . and potential applicants for licenses and parties to the dispute . . . know with all possible certainty, what the applicable rules are." Easton Publishing Co. v. Federal Communications Commission, 85 U.S. App. D.C. 33, 35, 175 F.2d 344, 346 (1949).

The Administrative Procedure Act, Section 8, states the requirement clearly:

All decisions . . . shall . . . include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues, of fact, law or discretion presented on the record.

The Commission's own regulations repeat the Act's requirement.¹³

It is the vital second step of the requirement which the Commission has omitted in this case. The opinion contains conclusions and occasionally what appear to be findings, but any "reason or basis" for these conclusions or findings is conspicuously absent. The Commission has made an inadequate attempt to supply the basis for its conclusions by saying in paragraph three of the opinion (32 F.C.C. at 924):

The findings of fact in the Initial Decision have been considered in light of the exceptions and replies filed, and we adopt them with the modifications noted in our discussion or in the appendix hereto, which

¹³ The final decision of the Commission shall contain: (1) Findings of fact and conclusions, as well as the reason or basis therefor, upon all the material issues of fact, law or discretion presented by the record. 47 C.F.R. §1.157.

contains our rulings on the exceptions to the Initial Decision. The Commission has also reviewed, in light of the exceptions, the Examiner's conclusions which, as pointed out above, led to an ultimate preference of the Community application. The Examiner's conclusions are modified to the extent reflected herein.

Apparently, the Commission intends for those seeking the sense of the opinion to find it in the Examiner's opinion (unless the facts he has found contradict the Commission's decision), the exceptions (if granted) or the Examiner's conclusions (if not overridden by an exception or the result of the case). This "do-it-yourself" method puts any reviewing court in the same plight as the court for whom Mr. Justice Cardozo spoke in reversing an ICC opinion (United States v. Chicago, Milwaukee and St. Paul R.R., 294 U.S. 499, 510-11):

. . . In the end we are left to spell out, to argue, to choose between conflicting inferences . . . We must know what a decision means before the duty becomes ours to say whether it is right or wrong.

Were a reviewing court to accept paragraph 3's challenge, it would have to go from the Commission's opinion, to the Hearing Examiner's findings of fact, to the exceptions and replies by the parties, then back to the Appendix of the Commission's Opinion to see which exceptions were granted, and finally check the Examiner's conclusions and return in the end to the Commission's Opinion to note its differences from the Examiner's conclusions. Even having performed this Herculean task, the court's problems would not be ended; the "reasons," it would find, by using the Commission method, contradict each other in many instances.

One of the grave difficulties involved in attempting to understand the Commission's opinion arises from the fact that the Commission professed to use the Hearing Examiner's conclusions, as well as his findings, to provide a basis for its decision. Thus, the Commission in

paragraph 3 did not negate but merely "modified" the Examiner's conclusions. But what is the basis for these modifications and how is a reviewing court to know why or how any specific conclusion was modified? The Commission suggests that the changes in the Examiner's conclusions were made in light of the exceptions filed by the parties. But the exceptions filed by the parties certainly do not explain every instance in which the Commission differed from the Examiner. To illustrate the impossibility of reading the opinion rationally, appellants set forth below several examples of the confusion which arise from an attempt to follow the Commission's instructions in paragraph 3:

(a) Tele-Views excepted to the Examiner's failure to find that it had gone to great lengths to assure the feasibility of its program plans by consulting with representatives of the College of Agriculture of the University of Illinois and by flying to Racine, Wisconsin, to secure the cooperation of the J. I. Case Company, whose home office is in Racine. (R. 6595; 32 F.C.C. at 980). The Appendix to the Commission's final decision (32 F.C.C. at 936), denies this exception on the ground that "[t]he plan — not the effort — is the significant factor." Yet, the text of the final decision (32 F.C.C. at 925) excuses the fact that Moline had no "plan" for making contacts to ascertain needs and concludes that "Moline's efforts, as shown upon this record, were sufficient." (Emphasis supplied.) It is impossible to understand the irreconcilable reasoning which finds Moline's efforts to be sufficient while at the same time it has concluded that it is the plan, not the effort, that is significant.

(b) In similar confusing fashion, the Commission denied Midland's Exception No. 4 (R. 7440-7441) which set forth the facts and conclusions as to why Midland, in its view, should be found superior to the other applicants in the areas of integration of ownership and management. The denial was based on the ground that (32 F.C.C. at 937) "the factual findings sought are already reflected in the record,

and the conclusions sought are not compelled from such findings." Yet the Commission elsewhere reached the inconsistent conclusion that Midland was "entitled to a substantial preference" for integration (32 F.C.C. at 928). While appellant Midland has no quarrel with the Commission's conclusion that it is entitled to a substantial preference on this criterion, the Commission's reasoning in denying its Exception No. 4 which requested that it reach such conclusion is inexplicable, and raises doubt as to which of the two inconsistent rulings were considered in the ultimate choice of the winning applicant.

(c) In like vein is the Commission's ruling (32 F.C.C. at 936) on Illiway's Exception No. 29 in which it requested the Commission to take cognizance of various facts, established on the record, which would tend to derogate the past broadcast experience of Moline's President and General Manager, Mr. Frank Schreiber (R. 8200-8201). The exception included, among other things, the fact that Schreiber left the employment of WGN-TV in 1956 after a dispute on policy matters; that he has not been nor has he attempted to get back into broadcasting since that date; that since he left WGN-TV he has held several different jobs for short periods of time and has, since May of 1957, owned and operated a restaurant in the Chicago area. The Examiner's decision contained none of these facts except a cryptic description of Schreiber as a "broadcaster - restaurant owner," (32 F.C.C. at 1068), and a single sentence stating that "Moline's proposed manager has been out of the business for several years" (32 F.C.C. at 1070). Nevertheless, the Commission in its ruling stated that all of these matters had been discussed by the Examiner.

The same Illiway exception urged the findings that WGN-TV under Schreiber's managership, had used per inquiry and mail order advertising and "pitch" commercials; that WGN-TV had not been an

NAB Code member under Schreiber; that action on WGN-TV's renewal applications were twice deferred under Schreiber's managership — once on programming grounds and once because of evidence of insolvency. Community's Exception No. 130 (R. 5549-5551) proposed similar findings, plus the finding that Schreiber had represented in his employment contract with Moline that in no instance had any station under his management encountered difficulty in obtaining renewals from the Commission (Tr. 3278). None of the above facts, except a footnote reference to one of the two deferrals of action on WGN-TV's renewal applications (32 F.C.C. at 1043), was set forth in the Examiner's Decision. Nevertheless the Commission stated that all of these matters were contained in the Examiner's decision (32 F.C.C. at 935, 936).

The Commission denied Illiway's Exception No. 29 and Community's Exception No. 130 on the ground that the "Examiner's findings adequately reflect the matters involved and the additional facts, even if substantially supported by the record, would be of cumulative effect, without any decisional significance." (Emphasis supplied.) Yet, it was Mr. Schreiber's past experience at WGN-TV which the Commission found to be the factor of greatest decisional significance outweighing preferences admittedly accorded to the other applicants for local residence, integration of ownership with management, and the like. The Commission's reasoning in denying exceptions designed to present the adverse aspects of Schreiber's experience on the grounds that they were of no decisional significance, while basing its entire decision for Moline on the alleged favorable aspects of Schreiber's experience is beyond understanding, and certainly is not explained. What is left are conflicting directions in reasoning, with the choice of reasoning unresolved.

(d) Finally, the Commission accepted (except as modified) the Examiner's findings of fact 19-26 (32 F.C.C. at 945-946), which detail

the broadcast experience of Community's principal, Mark Wodlinger. The Commission denied Illiway's Exceptions 3-6 (R. 8182-8183) to Examiner's findings 19-26, which urged, in effect, that Wodlinger's experience was limited to "sales," on the basis that the findings would be cumulative (32 F.C.C. at 936). But in paragraph 13 of its opinion (32 F.C.C. at 928-929), the Commission, while admitting that Wodlinger "has participated in various phases of broadcasting operations," dismissed his experience as mainly "sales." In paragraph 16 (32 F.C.C. at 930), the Commission indicated that it considers sales the totality of Wodlinger's experience: "We disagree with the Examiner that Wodlinger's experience in sales in the Moline area entitles Community to a preference . . ." And in paragraph 16 (32 F.C.C. at 930) the Commission spoke of Wodlinger's experience as "primarily devoted to sales," "in sales," and "very limited." These conclusions are completely inconsistent with the ruling on Illiway's Exceptions 3-6, and the Court is left in full doubt as to which is the true basis of the decision. Assuming the Court can determine how the Commission modified the Examiner's findings 19-26 in "light of the exceptions . . . and discussion [in the Commission's opinion]," the fact is that the relevant exceptions were denied, and there is no "discussion" in paragraph 13's two-sentence edict about Wodlinger's experience. Clearly, then, the Commission's conclusion does not "modify" the Examiner's findings about Wodlinger's experience, it instead dismisses them altogether. Since the Hearing Examiner's findings are in direct conflict with the Commission's conclusions, and since the Commission nowhere tells from whence came its conclusions, the Commission is left with no "reason or basis" in its decision for the claims about Wodlinger's limited experience.

Without proliferating examples¹⁴ appellants contend that, for all practical purposes, the decision contains no support for its conclusions.

It is clear in light of the foregoing that the Commission's decision is in direct conflict with Johnston Broadcasting Co. v. Federal Communications Commission, 85 U.S. App. D.C. 40, 175 F.2d 351 (1949), which laid down the substance which the Commission must follow in rendering its decisions. See particularly 85 U.S. App. D.C. at 45-47, 175 F.2d at 356-57. The opinion, of course, left the Commission wide discretion as to form, and the Court has repeatedly upheld the Commission's exercise of this discretion, so long as the substance of its decisions was clear. See, e.g., Tampa Times Co. v. Federal Communications Commission, 97 U.S. App. D.C. 256, 230 F.2d 224 (1956), and cases cited therein.

But the instant case is an open attempt to abandon altogether the principles set forth in Johnston Broadcasting. As such, it fails to meet the fundamental requirements of an agency decision. Failing to advise the parties and future litigants why a construction permit was given to one and refused another, the decision does not provide a rational basis for settling the dispute. As this Court has stated (Saginaw Broadcasting v. Federal Communications Commission, 68 U.S. App. D.C. 282, 291-92, 96 F.2d 554, 563-64 (1938), cert. denied, 305 U.S. 613):

[T]he inaccuracies alluded to . . . show that the Commission's decision was not based upon that careful consideration of the evidence which is properly to be expected from an unbiased body of experts discharging a function so important from the standpoint of both the parties and the public.

¹⁴ Anyone trying to understand the Commission's opinion would have considerable additional difficulties with details such as the granting of Community's Exception No. 144 (R. 5560) which is exactly the same, even to wording, as Illiway's Exception No. 37 (R. 8205), which was denied as "cumulative." (32 F.C.C. at 935, 936.) Also unintelligible is the Commission's finding in paragraph 15 (32 F.C.C. at 929-930), that Schreiber was for 15 years general manager of WGN-AM-TV. Yet the Commission granted Community's Exception No. 129 (R. 5549) which establishes that Schreiber was general manager only 10 years (32 F.C.C. at 935).

The Commission's short-cut method of writing this decision fails also to provide the parties or the Court with tools essential to judicial review (American Broadcasting Co., Inc. v. Federal Communications Commission, 83 U.S. App. D.C. 343, 350, 179 F.2d 437, 444 (1949)):

. . . [W]hen a decision is accompanied by proper findings of fact, the reviewing court can decide whether the decision reached by the Commission follows as a matter of law from the facts stated as its basis, and also whether the facts so stated have any substantial support in the evidence; but . . . in the absence of proper findings of fact, the reviewing tribunal can determine neither of these things. It has been made abundantly clear that the Commission must find not merely the ultimate facts but in addition the basic or underlying facts, and the court examines the evidence not itself to make a finding for the Commission of either the basic or the ultimate facts but to ascertain whether or not the basic facts are properly supported. (Emphasis added.)

The decision must be reversed with directions to follow the minimum requirements set forth in the cases cited above.

CONCLUSION

Appellants respectfully submit that it has been established that the Commission's decision here under review is fraught with basic error. The determination to grant the application of Moline and to deny those of appellants principally because of Moline's "experience" was not rationally explained by the Commission, nor could it be reasonably justified in light of the Commission's consistent application of the standards for choosing the best qualified among competing applicants. Moreover, the Commission erroneously failed to apply its clearly enunciated policy which requires an affirmative effort, even by local residents, to ascertain the tastes and needs of the community to

be served. Had the Commission properly applied its own policy in this regard, a very serious demerit would have attached to the applicant, Moline. Clearly the Commission's decision must be reversed and the entire proceeding remanded to the Commission for a complete reconsideration, which should include all comparative factors, as well as those discussed herein.

Respectfully submitted,

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November 8, 1962

APPENDIX

STATUTES AND RULES INVOLVED

Administrative Procedure Act, as amended:

SEC. 8 . . .

(b) Submittals and Decisions. - Prior to each recommended, initial or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

* * *

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion. - (a) Right of Review. - Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

* * *

(c) Reviewable Acts. - Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final

agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

* * *

(e) Scope of Review. - So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of Sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

Communications Act of 1934, as amended:

SEC. 308. (a) The Commission may grant construction permits and station licenses, or modifications or renewals thereof, only upon written application therefor received by it: . . .

* * *

(b) All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical and other qualifications of the applicant to operate the station; the ownership

and location of the proposed station and of the stations, if any, with which it is proposed to communicate; the frequencies and the power desired to be used; the hours of the day or other periods of time during which it is proposed to operate the station; the purposes for which the station is to be used, and such other information as it may require. The Commission, at any time after the filing of such original application and during the term of any such license, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied or such license revoked. Such application and/or such statement of fact shall be signed by the applicant and/or licensee.

* * *

SEC. 309. (a) Subject to the provisions of this section, the Commission shall determine, in the case of each application filed with it to which Section 308 applies, whether the public interest, convenience, and necessity will be served by the granting of such application, and, if the Commission, upon examination of such application and upon consideration of such other matters as the Commission may officially notice, shall find that public interest, convenience and necessity would be served by the granting thereof, it shall grant such application.

* * *

(2) If the Commission finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact and that a grant of the application would be consistent with subsection (a), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent with subsection (a), it shall proceed as provided in subsection (e).

(e) If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with

particularity the matters and things in issue but not including issues or requirements phrased generally. When the Commission has so designated an application for hearing the parties in interest, if any, who are not notified by the Commission of such action may acquire the status of a party to the proceeding thereon by filing a petition for intervention showing the basis of their interest at any time not less than ten days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

Commission Rules and Regulations

SEC. 1.157 Final decision of the Commission.

(a) After opportunity has been afforded for the filing of proposed findings of fact and conclusions, exceptions, supporting statements, briefs, and for the holding of oral argument as provided in this subpart, the Commission will issue a final decision in each case in which an initial decision has not become final.

(b) The final decision shall contain:

(1) Findings of fact and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record;

(2) Ruling on each relevant and material exception filed; and

(3) The appropriate rule or order and the sanction, relief or denial thereof.

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BRIEF FOR APPELLEE

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

MOLINE TELEVISION CORPORATION,
Intervenor.

No. 17,102

MIDLAND BROADCASTING CO.,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

MOLINE TELEVISION CORPORATION,
Intervenor.

No. 17,108

ILLIWAY TELEVISION, INC.,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

MOLINE TELEVISION CORPORATION,
Intervenor.

No. 17,110

TELE-VIEWS NEWS COMPANY, INC.,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

MOLINE TELEVISION CORPORATION,
Intervenor.

ON APPEAL FROM A DECISION AND ORDER OF
THE FEDERAL COMMUNICATIONS COMMISSION

United States Court of Appeals
for the District of Columbia Circuit

JAN 4 1963

Joseph M. S. Clark

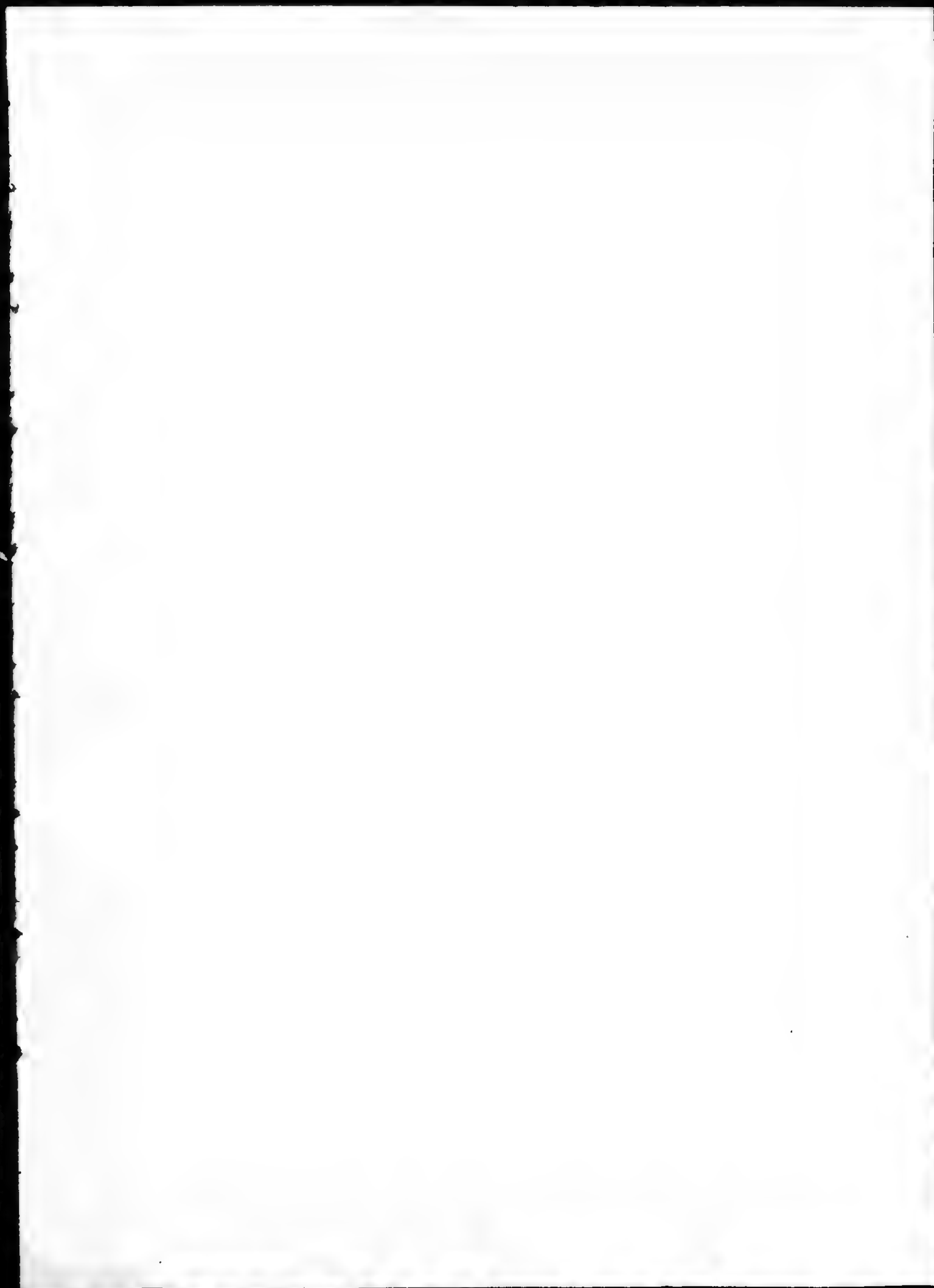
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STATEMENT OF QUESTIONS PRESENTED

The questions presented, as agreed to by the parties in a stipulation approved by order of the Court dated September 12, 1962, are as follows:

1. Whether the Commission's decision granting the application of Moline Television Corporation, based upon a determination that the criterion of broadcast experience was determinative, was arbitrary and erroneous, unsupported by the record, and failed properly to consider all relevant matters affecting the qualifications of the applicants.

2. Whether the Commission's decision that there were no significant differences among the applicants with respect to the planning of their program proposals was contrary to the record and whether the decision constituted an improper departure from and violation of established Commission policy.

*3. Whether the Commission's findings form an adequate basis for its conclusions and whether the findings and conclusions meet the minimum requirements to permit proper judicial review.

*Appellee and intervenor reserved the right to argue that Question 3 is not properly before the Court.

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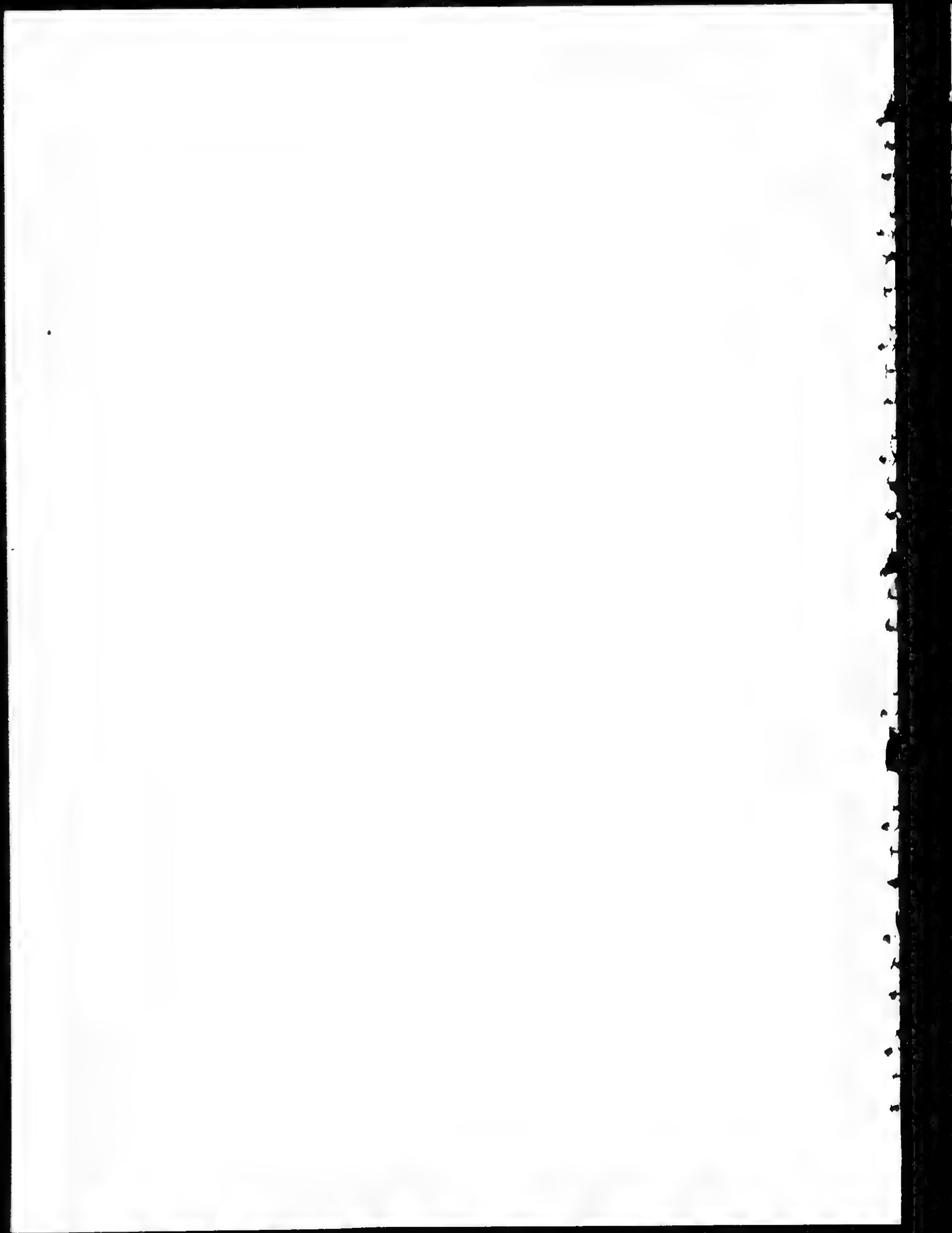
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*Cases or authorities chiefly relied upon are marked by asterisks.



IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee

MOLINE TELEVISION CORPORATION,
Intervenor.

No. 17,102

MIDLAND BROADCASTING CO.,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

MOLINE TELEVISION CORPORATION,
Intervenor.

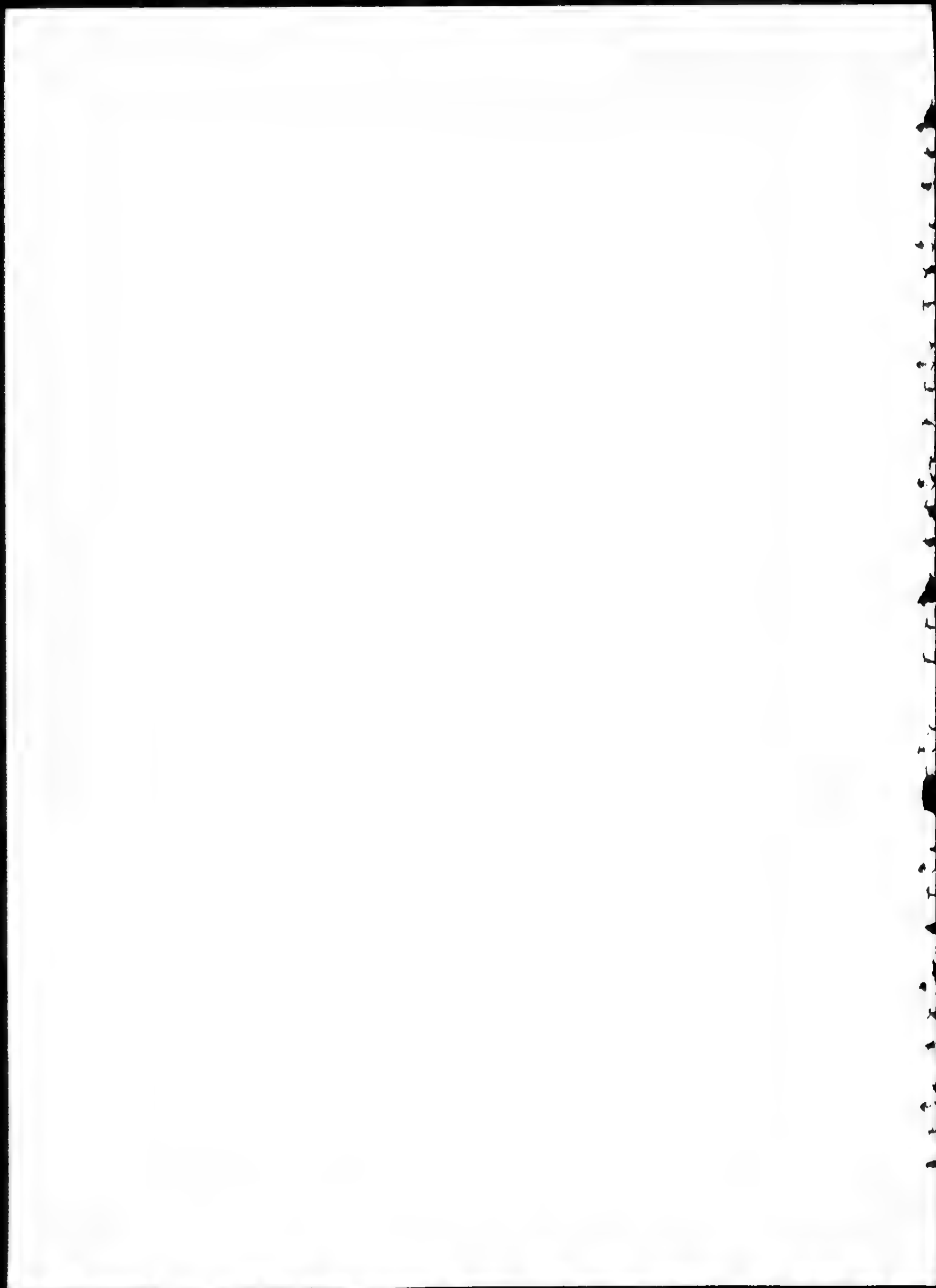
No. 17,108

ILLIWAY TELEVISION INC.,
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

MOLINE TELEVISION CORPORATION,
Intervenor.



No. 17,110

TELE-VIEWS NEWS COMPANY, INC.
Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION,
Appellee,

MOLINE TELEVISION CORPORATION,
Intervenor.

ON APPEAL FROM A DECISION AND ORDER OF
THE FEDERAL COMMUNICATIONS COMMISSION

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

These consolidated cases are appeals under Section 402(b)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 402(b)(1), by Community Telecasting Corporation (Community), Midland Broadcasting Co. (Midland), Illiway Television, Inc. (Illiway), and Tele-Views News Company, Inc. (Tele-Views), from a decision of the Commission adopted on May 16, 1962, and released May 21, 1962. The decision granted the application of Moline Television Corporation (Moline), intervenor herein, for a construction permit for a new television broadcast station to operate on Channel 8 in Moline, Illinois,^{1/} and denied the mutually exclusive applications

^{1/} By a Report and Order adopted February 26, 1957, in Docket No. 11749, television Channel 8 was assigned to the Davenport, Iowa-Rock Island-Moline, Illinois, metropolitan area (15 Pike & Fischer, R.R. 1550c). Due to the growth of East Moline, Illinois, and Bettendorf, Iowa, these two communities are

(cont'd)

of appellants. The Commission's Decision and Order (R. 5907-5925) is reported at 32 F.C.C. 923.^{2/}

By order released on June 30, 1958, the five mutually exclusive applications for Channel 8 in Moline were designated for hearing in a consolidated proceeding (R. 241-243). The evidentiary hearing commenced on January 26, 1959, and the record was closed on September 24, 1959. On April 28, 1960, after the filing of proposed findings and conclusions, the hearing examiner released an Initial Decision looking toward a grant to Community (R. 5302-5459, 32 F.C.C. 939-1072.)^{2/} Community filed exceptions to, and a statement in support of, the Initial Decision (R. 5463-5569, 5613-5614). Exceptions were also filed by the Broadcast Bureau (R. 5570-5574), Tele-Views (R. 6572-6619), Midland (R. 7434-7443), Illiway (R. 8181-8208), and Moline (R. 9138-9262).

The Commission heard oral argument en banc on June 2, 1961 (Tr. 3749-3842).^{3/} By a Public Notice issued June 29, 1961, the

^{1/} (cont'd) generally considered within this metropolitan area, which is popularly known as the Quint Cities (R. 4895). All parties have referred to the proposed service area as the Quint Cities.

^{2/} Since the Commission's printed slip opinion and the examiner's opinion will be used as part of the joint appendix pursuant to Rule 16(f), this brief will hereafter refer only to the pages of the official opinions.

^{3/} The "Tr." prefix to a record reference is to the original pagination of the hearing transcript in the record before the Commission which has been filed with the Court. These transcript pages have not been renumbered in the record.

Commission announced that it had directed preparation of a document "looking toward granting the application of" Moline and denial of the competing applications.^{4/} A Joint Petition for Reargument was filed with the Commission on July 21, 1961 by Community, Midland, and Illiway, in which petitioners sought to have the instructions vacated and set aside, and the case scheduled for reargument (R. 5727-5741). Petitioners contended that the requested action was warranted on the ground that Moline had conducted no survey to ascertain the needs of the community to be served, and that recent decisions showed such a survey to be necessary (R. 5730-5733). Moline opposed this petition on August 3, 1961 (R. 5743-5751). In a Memorandum Opinion and Order released September 29, 1961, the petition was dismissed as premature (R. 5759-5760).

On January 30, 1962, Community submitted a further petition to reopen and remand the proceedings for further hearing (R. 5761-5790). It was alleged that changes had occurred in the circumstances of several of the applicants which affected their qualifications, and which, if established as true, "would materially and substantially affect the outcome of the decision (R. 5789). Disposition of this petition was included in the Commission's

^{4/} Public Notice B, Report No. 151, Mimeo. 7064. It was further stated that:

Announcement of these preliminary steps does not constitute Commission action in such cases, but is merely an announcement of proposed disposition. The Commission reserves the right to reach a different result upon the subsequent adoption and issuance of the formal decisions.

decision on the merits.

The Commission's decision was issued on May 16, 1962. It granted the application of Moline, two Commissioners not participating and two dissenting. In its decision, the Commission discussed each of the relevant considerations bearing on the choice of the applicant which would best serve the public interest. It agreed with the hearing examiner's conclusion that no basis for a preference existed in the areas of program planning; studios, staffing, and equipment; and operating policies (32 F.C.C. at 925), and that Illiway, Community, and Moline shared a preference over Midland and Tele-Views in the area of diversification of business interests of principals (32 F.C.C. at 926). With respect to the contention that Moline's program proposals did not reflect the needs of the area, because it was based primarily on the knowledge of the area held by its personnel, the Commission determined that Moline adequately evinced a familiarity with local needs and showed an adequate effort to meet them (32 F.C.C. at 925).

However, the Commission disagreed with the examiner's conclusion that Community was to be preferred in certain other areas of comparison. A preference given to Community on programming because of its higher percentage of educational programs (32 F.C.C. at 1071), was deemed unwarranted where the programming proposals of each of the applicants were well-balanced and no particular community need for emphasis on one type of programming

had been shown. The Commission held that "any preference awarded on the basis of such emphasis would entail a Commission judgment that one type of programing is to be preferred over another without regard to community need" (32 F.C.C. at 925).

The Commission also rejected the examiner's view that Community merited a preference in civic participation. It did so on the ground that the record disclosed that the local stockholders of all the applicants had participated in community affairs (32 F.C.C. at 926; 32 F.C.C. at 1066-1068). All of the applicants except Midland were rated equal, and all were given a preference over Midland because only its minority stockholders had a record of civic participation in the Moline area.

In the area of integration of ownership and management, the Commission disagreed with the examiner's award of a preference to Community based in part upon the participation of stockholders as advisors or members of advisory committees (32 F.C.C. at 927; 32 F.C.C. at 960, 961, 1071). The Commission concluded that the stockholders' "functions and depth of participation are too indefinite to provide any basis for a preference as between applicants" (32 F.C.C. at 927). In this area of comparison, Midland was found to make the strongest showing, since officers and stockholders representing a 67 percent stock interest would devote full time, and the remainder a minimum of twenty hours per week, to station operation. Midland was awarded a substantial preference (32 F.C.C. at 927-928). Both Moline and Community proposed a 10 percent

stockholder as general manager, who would devote full time to the operation of the station. However, Community was held entitled to a "degree of preference" over Moline because more of Community's remaining stockholders, with a greater aggregate of stock interest, would participate for 10 hours or more a week in station management and operation (32 F.C.C. at 928). Only two of Illiway's stockholders, representing a combined stock interest of 5.5 percent, would devote full time to the station, and that applicant was accordingly ranked fourth on this factor. Tele-Views made the weakest showing, since it had no stockholder who would devote a substantial portion of his time to station operation.

The hearing examiner had awarded a preference in broadcast experience to Community, because the experience of Mark L. Wodlinger, a 10 percent stockholder and proposed general manager, had been acquired "in the Quint City Market" (32 F.C.C. at 944, 945, 1070). Mr. Wodlinger had been a salesman for broadcast stations in the area from 1948 to 1950, and a sales manager from 1950 to 1958 (R. 1069-1071). Although he had participated in the preparation of some programs, the Commission found that his broadcasting career had been devoted primarily to sales, and concluded that "whatever significance may be attributed to experience in the locale cannot outweigh the very limited nature of such broadcast experience compared to that represented by Moline, Illiway, and Midland" (32 F.C.C. at 928-930). Moline was ranked first in this area of compari-

son by reason of the experience of Frank Schreiber, its president, 10 percent stockholder, and proposed general manager. This experience extended back to 1931 and included ten years as general manager of a television station (R. 4588-4593, Tr. 3027-3029, 3052, 3056). The principals of Tele-Views had no broadcast experience and were ranked last (32 F.C.C. at 930).

In the area of local residence, the Commission agreed with the examiner's preference for Community, but concluded that the preference over Tele-Views (which was second), Moline (third), and Illiway (fourth), and between each of the applicants, was very slight in view of the fact that a majority of the stock of each is owned by, and the applicant would therefore be in control of, local residents (32 F.C.C. at 926-927). Only a minority of Midland's stock is locally owned, and that applicant was rated last.

The Commission also agreed with the examiner's award of a preference in the area of diversification of control of the media of mass communication to Community, Tele-Views, and Midland, but held that the preference over Moline was slight and, over Illiway, only moderate, due to the minor nature of the publication in which one principal of Moline had an interest and the small interest held by certain principals of Illiway in other mass media. (32 F.C.C. at 925).

In its final evaluation, the Commission concluded that

Moline had made "a better overall showing than any of the other applicants," stating (32 F.C.C. at 931):

It has a pronounced superiority over Tele-Views in the areas of broadcast experience and integration of ownership and management, and its superiority in these areas far outweighs the slight preference accorded to Tele-Views in the area of local residence and the very slight preference in the area of diversification of ownership of mass media of communications. Moline is likewise to be preferred over Midland. Though the latter makes a superior showing in the area of integration of ownership and management, with a very slight added preference in the area of diversification of mass media, it is not controlled by local residents, as is Moline, and its broadcast experience does not match that of Moline. Moline also makes a better showing than Illiway. Though the differences between these two applicants are small, Moline made a better showing in each of the areas in which differences were found to be present. Moline also makes a better showing than Community. It makes a substantially better showing than Community in the area of broadcast experience. While, as we have indicated, Community makes a somewhat better showing in the areas of integration, local residence, and diversification of mass media, the differences between Moline and Community in these areas are slight and do not, in the Commission's judgment, outweigh the superiority of Moline in the area of broadcast experience.

The Commission granted the application of Moline and denied the applications of the competing applicants.^{5/} Community's

^{5/} As a result of this Court's order of remand on May 12, 1959 in WIRL Television Company v. Federal Communications Commission, Case Nos. 13,768, 13,769, 13,912, rule making proceedings were pending before the Commission at the time of the entry of the order herein, which might have affected the assignment of Channel 8. The Commission therefore made the grant subject to the condition that no construction be commenced prior to its further order. However, the Commission subsequently adhered to its original decision concerning the assignment of Channel 8, and the Court was so advised by a Report and Recommendation of the Commission filed in the

pending petition to reopen the proceedings was also denied (32 F.C.C. at 931). Insofar as the petition related to applicants other than Moline, the matters were not discussed since they could not affect the outcome of the case. With respect to the allegations against Moline, it was concluded that nothing of sufficient substance to warrant a reopening had been presented.

5/ (cont'd) WIRL case on August 1, 1962. By an order dated November 1, 1962, this Court held that "insofar as this court is concerned, the Commission is free to follow its own judgment in respect to the matter of removing the aforesaid condition." The Commission deleted the condition in an Order adopted December 5, and released December 7, 1962 (F.C.C. 62-1259).

SUMMARY OF ARGUMENT

I.

The Commission reasonably concluded that no significant difference existed among the applicants with respect to the factor of planning for program proposals. An applicant for a broadcast facility must demonstrate that he will fulfill his obligation to serve the public interest by making a diligent and positive effort to determine the needs of the public in the community to be served, and to provide programing to meet those needs. However, the Commission has not held, as appellants argue, that the obligation to ascertain community needs may be fulfilled only by conducting extensive surveys and interviewing large numbers of persons in the area. On the contrary, the Commission has held in ruling on applications that the method used is not critical, and that an applicant may equally rely, as did Moline, primarily upon the intimate knowledge of the area possessed by its stockholders, officers and directors.

The record amply supports the Commission's finding that Moline was familiar with the needs of the proposed service area and intended to serve such needs. Twenty of the officers and directors of Moline, representing 75 percent of the stock in the applicant, are local residents who are engaged in a diversity of occupations and professions and who have actively participated in numerous civic, religious, charitable, professional and social organizations for many years. They are among the leaders to whom any inquiries concerning community

programing would in any event be directed. The benefit of their knowledge accrued to the applicant through discussions at numerous meetings prior to the preparation of the applicant's program schedule, at which the stockholders expressed their views and suggested programs to be incorporated into the proposals submitted to the Commission.

II.

The Commission gave careful consideration to the qualifications of each applicant in all of the relevant areas of comparison. The Commission awarded the construction permit to Moline because it made a better overall showing than any of the other competing applicants, and not, as appellants assert, only because the showing in all areas "was considered totally unimportant as compared to the showing in broadcast experience" (Br. 27). The factor of broadcast experience was given decisive weight only after the Commission had determined that no applicant had otherwise demonstrated a preponderant superiority, and no arbitrary emphasis was accorded this factor. The use of broadcast experience as a comparative criterion is of long standing, and no additional explanation by the Commission of its use here was necessary.

Substantial evidence supports the Commission's finding that Moline was entitled to a substantial preference in this area of comparison. The experience of Schreiber, Moline's president, who will devote his full time to the operation of

the station, extends back to 1931. During that period, he occupied positions of great responsibility, including 10 years as general manager of a television station. The principals of no other applicant possessed experience which matches that of Schreiber.

Appellants' argument that Schreiber's experience is "more than equalized" (Br. 36, 37) by the termination of his employment with the television station in 1956 is insubstantial. The record in this case was closed in 1959 and any argument based upon the period subsequent thereto is purely conjectural. In any event, Schreiber's extensive experience was not dissipated by his disassociation from the industry for a relatively brief period of time. Nor is there any basis for the additional contention that Schreiber's experience should be depreciated, due to the alleged poor performance of station WGN-TV while he was the general manager. No shortcomings in the operation of WGN-TV have been shown. Moreover, Schreiber was not the licensee of the station and has not been shown to be responsible for the matters urged by appellants as showing poor performance by WGN-TV.

III.

The Commission made adequate findings of fact and conclusions in its decision, and the adoption of a major portion of the examiner's findings, without rewriting them, was proper procedure. Appellant's allegations of confusion and inconsistency in the Commission's decision are not supported by the record.

ARGUMENT

Over the years the Commission has developed several criteria for determining in a comparative hearing which of several competing applicants for the same broadcast facility would best serve the public interest. The appellants here do not question the validity of the comparative factors considered by the Commission (Br. 26), but differ with the Commission's judgment concerning the application in this proceeding of the criteria of (1) planning for program proposals, and (2) broadcast experience.

The pertinent standard of review in comparative television proceedings is well settled and requires no extended discussion. As this Court stated in Tampa Times Company v. Federal Communications Commission, 97 U.S. App. D.C. 256, 259, 230 F. 2d 224, 227:

The Congress conferred upon the Commission the task and the responsibility of evaluating comparative claims of mutually exclusive applicants. So long as it observes all procedural requirements, considers the issues, reaches reasoned conclusions, and renders reasoned judgment, courts cannot superimpose their opinions upon these matters.

We shall show that the Commission's choice among the competing applicants in this case is a reasonable and permissible exercise of its discretion and that the findings are based upon substantial evidence.

I. THE COMMISSION PROPERLY CONCLUDED THAT NO SIGNIFICANT DIFFERENCES EXISTED AMONG THE SEVERAL APPLICANTS IN PLANNING THEIR PROGRAM PROPOSALS

The Commission, in agreement with the hearing examiner, concluded that no applicant was entitled to a preference with respect to the criterion of planning for program proposals. Appellants contend, however, that Moline did not conduct an extensive survey in the proposed service area in order to ascertain community needs before submitting its program proposals, and that its failure to do so constituted such a departure from Commission policy as to require the imposition of a substantial demerit in this area of comparison (Br. 10-21). The argument is premised upon a misconception of Commission policy.

Unquestionably, an applicant for a broadcast facility must demonstrate that he will fulfill his obligation to serve the public interest, convenience and necessity by making a diligent and positive effort to determine the tastes, needs, and desires of the public in the community proposed to be served, and by providing programing to meet those needs and interests. Report and Statement of Policy Re: Commission En Banc Programming Inquiry, 20 Pike & Fischer, R.R. 1901, 1912, 1913 (hereafter referred to as the "Programming Policy Statement."^{6/} Thus, the Commission

^{6/} The requirement that an applicant for a broadcast facility demonstrate a familiarity with the needs of the service area is not new. See Hughes, 5 F.C.C. 120, 123; Martin, 3 F.C.C. 461, 462; De Bogory, 2 F.C.C. 336, 340.

in that Statement set forth the basic requirement as follows
(20 Pike & Fischer, R.R. at 1913):

In the fulfillment of his obligation the broadcaster should consider the tastes, needs and desires of the public he is licensed to serve in developing his programming and should exercise conscientious efforts not only to ascertain them but also to carry them out as well as he reasonably can. He should reasonably attempt to meet all such needs and interests on an equitable basis. Particular areas of interest and types of appropriate service may, of course, differ from community to community, and from time to time. However, the Commission does expect its broadcast licensees to take the necessary steps to inform themselves of the real needs and interests of the areas they serve, and to provide programming which in fact constitutes a diligent effort, in good faith, to provide for those needs and interests.

As appellants point out (Br. 11), the Programming Policy Statement also refers to a proposed revision of the application forms, which has not yet been put into effect, to seek information as to the applicant's canvass of the public and consultation with community leaders. However, this proposal did not constitute a definitive statement of the method an applicant must utilize to prepare his program proposals, and it is not the standard employed by the Commission in its decisions on individual applications. The Commission has not held that the obligation to ascertain community needs may be properly fulfilled only by interviewing numbers of persons in the community, or that knowledge of the community otherwise obtained is inferior as a basis for planning programming. In Suburban Broadcasters, 30 F.C.C. 1021, 20 Pike & Fischer, R.R. 951, affirmed

sub nom. Henry v. Federal Communications Commission, 112 U.S. App. D.C. 257, 302 F. 2d 191, cert. den. 371 U.S. 821, cited by appellants (Br. 12, 13, 17, 19), the Commission denied an application for an FM broadcast facility where the application had been prepared by non-residents who were totally unfamiliar with the community to be served, and who had made no inquiry into the characteristics of the area or its particular programming needs. In this case, decided after the Programming Policy Statement was issued, the Commission ruled that it had generally presumed that an applicant would satisfy a community's needs if the applicant had at least a rudimentary knowledge of such needs.

In The Toledo Blade Co., 25 F.C.C. 251, 15 Pike & Fischer, R.R. 739,^{7/} a comparative television proceeding, certain of the applicants for the new television station conducted extended surveys and contacted numerous individuals and organizations, while others relied principally upon their knowledge gained through the operation of local radio stations and therefore made a more limited number of contacts. The Commission held that no basis existed for awarding a preference to any applicant on the criterion of planning, stating (25 F.C.C. at 360, 15 Pike & Fischer, R.R. at 830: "Thus, while their techniques differ somewhat, it is apparent that each of the applicants made serious efforts to ascertain local needs and to gear their respective proposals to the specific needs determined to exist and available program

^{7/} Affirmed per curiam, sub nom. Great Lakes Broadcasting Company v. Federal Communications Commission, 110 U.S. App. D.C. 88, 289 F. 2d 754.

sources."^{8/}

Also see Veterans Broadcasting Co., Inc., 29 F.C.C. 83, 88, 19 Pike & Fischer, R.R. 339, 339g, where, in a comparative television case, the Commission stated: "In the comparative area of planning and preparation, we agree with the examiner that Veterans' studies of the needs of the Albany area and Capital's knowledge and experience gained in its Albany operations (AM, FM, and UHF) are in balance, and that neither applicant is entitled to a preference in this area; we cannot say, under the circumstances here presented, that experience in the area to be served outweighs in significance a study of the area's needs, or vice versa."

Nor is the decision herein inconsistent, as claimed (App. Br. 17), with that in Herbert Muschel, 23 Pike & Fischer, R.R. 1059. That case concerned proposals for highly specialized types of programming which raised an unusual question as to the need for the programming proposed by applicants. It was for that reason that the Commission added an issue to determine what efforts the applicants had made to determine the needs of the area. See Herbert Muschel, 20 Pike & Fischer, R.R. 900, 902. The Commission there recognized that "the question of the extent to which an applicant must inquire into community needs is not susceptible to simple resolution." 23 Pike & Fischer, R.R. 1065. The winning applicant, New Broadcasting Co., was found equal to its opponent on this factor, although its determination that there was a need for specialized programs of in-

^{8/} KORD, Inc., 21 Pike & Fischer, R.R. 781. upon which appellants rely (Br. 13) is inapposite. That case related to a renewal application where a substantial deviation existed between proposals and actual performance.

terest to Negroes was clearly based primarily on past general community contacts rather than on specific meetings with members of the community to discuss the proposed programs (See 23 Pike & Fischer, R.R. at 1064-1066). Indeed the applicant's determination of a further need for Jewish-oriented programing was made without any specific contacts being shown. The Commission found a demonstrated familiarity to be fully sufficient (23 Pike & Fischer, R.R. at 1066).

The standard applied here by the Commission in determining that no significant difference existed among the applicants with respect to the factor of planning, is thus consistent with its holdings in other cases. It was predicated upon the factual determination that Moline, as well as the other applicants, had demonstrated a familiarity with area programing needs. The record amply supports the Commission's finding that Moline was familiar with the needs of the proposed service area and intended to serve such needs.

Prior to the preparation and submission of Moline's program proposals, Schreiber, its president and proposed general manager, (R. 4588), and Stengel, a vice-president and director who has resided in Rock Island, Illinois for many years (R. 4614), interviewed representatives of several organizations in the communities included within the proposed service area in connection with various program proposals. Among those consulted were persons associated with several colleges, the public school system in

Moline, E. Moline, and Rock Island, a religious organization, a medical association, the Tri-City Symphony Orchestra and the Civic Music Association. (32 F.C.C. at 1058, 1059: R. 4618, 4623, Tr. 3037-3039. 3096. 3106, 3107, 3109. 3111-3113, 3150-3153, 4805-4807). Primarily, however, Moline relied, in the preparation of its program proposals, upon the extensive and intimate knowledge of the area possessed by its officers, directors, and stockholders, (32 F.C.C. at 1071).^{9/}

Twenty of the officers and directors of Moline, representing 75 percent of the stock in the applicant, are local residents who have participated in diverse community activities

^{9/} The examiner's opinion sets forth the community contacts made by Moline and the reason why additional contacts were not made (32 F.C.C. at 1058):

These stockholders were of the opinion that, by virtue of their long residence in the area and their own activities in various civic, cultural, and charitable organizations, they themselves possessed knowledge of the area to assess its community needs. They also know from their own activities that the needs of the area would probably change in the interim between planning and actual operation. However, upon recommendation of their then Washington counsel, (footnote omitted) they had initially agreed to conduct conversations with representatives of various local organizations in order to secure commitments from these individuals as to various programs. These conversations were held by Messrs. Schreiber and Stengel, who in turn transmitted the information which they secured to the other stockholders. After more than a dozen of such conversations, it became apparent to the directors that these public service individuals felt that the most opportune time for such arrangements would not be at that stage of their activities, but when the group was ready to go on the air.

over a period of many years and who are manifestly familiar with the interests, problems and needs of the area (32 F.C.C. at 1041-1059).^{10/} Thus, Francis J. Coyle, chairman of the board of directors and holder of 12 1/2 percent of the voting stock, has been a member of the Illinois House of Representatives, an Illinois circuit judge, and an assistant state's attorney for Rock Island County. He is presently a member of the Rock Island Chamber of Commerce and a Commissioner of the Metropolitan Airport Authority of Moline, a public organization which operates the airport (32 F.C.C. at 1043; R. 4594-4597).

A vice-president and 10 percent stockholder, Victor B. Day, is also a Commissioner of the Metropolitan Airport Authority and, in addition, has served as president and director of the Rock Island Chamber of Commerce (32 F.C.C. at 1044; R. 4604-4608). Dr. L. F. Helfrich, an officer and 5 percent stockholder, has been engaged in the practice of surgery in the area since 1946. He has served as president of the staff of Moline Public Hospital, and is presently a member of the executive board of the Moline Lutheran Hospital, and the Chairman of the Nurse's Scholarship Committee. In addition he has been a member of the Moline Rotary Club, Committee of Development of the Moline Y. M. C. A.,

^{10/} One director, William T. Leonard, died after the conclusion of the hearing, and his one-half percent stock interest was transferred to his wife as executrix of his estate (32 F.C.C. at 934, 935).

the Moline Association of Commerce, and the Citizen's Advisory Committee which was concerned with improvement of the school curriculum and the construction of a new high school (32 F.C.C. at 1044; R. 4609-4613).

Richard Stengel, vice-president and 9 percent stockholder, served in the Illinois General Assembly for four consecutive terms and received the Illinois Legislative Correspondents' award as an outstanding legislator in 1953 and 1955. He also served as Assistant United States Attorney and with the Illinois Commission on Higher Education. At present, he is a member of the Rock Island Chamber of Commerce and the Board of Advisors of Rock Island Y.M.C.A. Boys' Camp Hauberg (32 F.C.C. at 1045; R. 4614-4620). Charles G. Agnew, a pharmacist, an officer and 5 percent stockholder of Moline, served on the East Moline Board of Education, was a member of the Rock Island County Rent Control Board during World War II, and is vice-president of the Association of Commerce of East Moline (32 F.C.C. at 1043, 1044; R. 4598-4603).

The persons discussed in detail above are typical of the ^{11/} background of the principals of Moline who are local residents.

^{11/} A still incomplete list of principals and their activities include: Samuel M. Gilman, director of Citizens for Good Government, and a director and past treasurer of the Rock Island Community Chest (32 F.C.C. at 1045); Calvin Ainsworth, director of the Moline Chapter, American Red Cross, and a member of the Moline School Board (32 F.C.C. at 1045); and Charles G. Rehling, a member of the board of Friendly House, which provides recreational facilities for underprivileged children (32 F.C.C. at 1048).

The record clearly establishes that the local-resident officers and directors of the applicant are engaged in a diversity of occupations and professions, and have actively participated in numerous civic, religious, charitable, professional, and social organizations in the area. They are among the leaders to whom any possible inquiries would be directed in any case. The benefit of their knowledge and experience accrued to the applicant through discussions at numerous meetings both formal and informal, which were held prior to the preparation of its program schedule (32 F.C.C. at 1050-1051). At those meetings, the stockholders expressed and discussed their views as to community needs and suggested programs, several of which were specifically incorporated into the proposal submitted to the Commission (32 F.C.C. at 1050-1059; R. 4592, 4622, 4623, 4641, 4659, 4677-4680, 4681-^{12/}4683, Tr. 2992, 3018, 3038, 3089, 3090, 3297).

The basic issue here is whether the examiner and the Commission could reasonably determine that no preference should be given on planning a program schedule designed to meet the public's needs and interests where one of the applicants relied "primarily on subjective factors, i.e., the professed intimate knowledge of its officers, stockholders, and directors of the Moline area rather than objective data gleaned from contacts and

^{12/} Finally, it may be noted that the Commission found that "the written surveys and/or personal contacts of Community Telecasting Corp., Tele-Views News Co., and Illiway to a considerable extent were actually completed after the date of filing of their respective program proposals." (32 F.C.C. at 937.) While appellants do not concede the validity of this finding (Br. 14, note 2), they do not demonstrate that it is incorrect.

observations specifically for that purpose." (32 F.C.C. at 1071.) As we have shown, the Moline personnel were thoroughly familiar with the area's needs and interests. They also conducted some discussions with local groups, which were not engaged in greater numbers only because it was believed that civic cooperation was available and could best be arranged in detail at a later time. Appellants have failed to show that the Commission's judgment was arbitrary. We believe it was clearly within the competence of an expert administrative body.

II. THE COMMISSION PROPERLY EVALUATED ALL OF THE COMPARATIVE CRITERIA IN DETERMINING THAT A GRANT TO MOLINE WOULD BEST SERVE THE PUBLIC INTEREST. ITS CONCLUSION THAT MOLINE WAS SUPERIOR IN THE AREA OF BROADCAST EXPERIENCE WAS BASED ON SUBSTANTIAL EVIDENCE.

Although set forth in several subdivisions, appellants' principal contentions in Point II (Br. 22-41) are that the Commission placed an unwarranted emphasis upon the criterion of broadcast experience, and that there is not substantial evidence to support the award of a preference to Moline over the other applicants on this criterion. We shall show that the choice among the competing applicants in this case is a reasonable and permissible exercise of the Commission's discretion.

The Commission did not, as appellants assert (Br. 27), award the construction permit to Moline "only because the showing in all other areas was considered totally unimportant as compared to the showing in broadcast experience" (Br. 27),

but because Moline "had made a better overall showing than any of the other applicants" (32 F.C.C. at 931). As the facts set forth in the statement (supra, pp. 4-8) clearly demonstrate, the Commission gave careful consideration to the qualifications of each applicant in all of the areas of comparison. The Commission's decision makes amply clear (see, especially, 32 F.C.C. at 931) its ultimate findings as to the degree, if any, of differences among the applicants on each relevant factor, and its final weighing of the preferences it awarded. No more is required. Scripps-Howard Radio, Inc. v. Federal Communications Commission, 89 U.S. App. D.C. 13, 189 F. 2d 677, cert. den. 342 U.S. 830.

The Commission found no differences of significance among the applicants with respect to the factors of planning; studios, staffing and equipment; policies; and programing (32 F.C.C. at 925). Midland was awarded a substantial preference over the other applicants in the area of integration of ownership and management, since stockholders representing a 67 percent stock interest would devote full time to the management of the proposed station. However, it made the poorest showing on the criteria of local ownership and civic participation (32 F.C.C. at 926-928).

Community, which was rated first as to local ownership, was ranked only fourth in the area of broadcast experience. Moreover, its preference on local ownership was slight, since 87 percent of

the stock of Tele-Views, 75 percent of Moline, and 67 percent of Illiway, was also owned by local residents (32 F.C.C. at 927, 930).

Neither Illiway nor Tele-Views established an outstanding superiority in any area of comparison, although each shared preferences with others in certain categories. However, Tele-Views made the weakest showing of any applicant in integration of ownership and management, and the broadcast experience of its principals, and Illiway was rated fourth in integration (32 F.C.C. at 928, 930).

In the case of each of the appellants, therefore, an area of preference was counterbalanced by one or more areas of substantial weakness. No comparable situation prevailed with respect to Moline. That applicant established a substantial superiority in broadcast experience, and it shared preferences with other applicants in the areas of civic participation and diversification of business interests. Where Moline yielded a preference, the difference between the applicants was not substantial.

Majority ownership and control of Moline, as well as of Community and Tele-Views, is vested in local residents of the area, thus assuring, as the Commission found (32 F.C.C. at 926) "continued insight into the ever-changing needs of the area * * *." By reason of their somewhat larger percentage of local stock ownership, however, Community and Tele-Views were awarded a "very slight preference" over Moline. Similarly, the slight

preference to Community over Moline in the area of integration of ownership and management was based on the part-time participation in station operation of a few more stockholders.

Three applicants were accorded a preference over Moline in the area of diversification of control of the media of mass communications, solely because a 1 percent stockholder in Moline is a majority stockholder in a small weekly newspaper. The area reached by this newspaper is served by four daily and two weekly newspapers and several broadcast stations, and the preference was accorded only "very slight comparative significance" (32 F.C.C. at 925-926). Thus, in no area of comparison did Moline make a weak showing.

In addition to the preference awarded it for broadcast experience, however, Moline was found to be entitled to a significant preference over Tele-Views in the area of integration of ownership and management, over Midland with respect to local ownership and civic participation, and over Illiway in the area of integration of ownership and management. Although Community made a somewhat better showing than Moline in the areas of integration of ownership and management, local residence, and diversification of control of the media of mass communications, Moline demonstrated substantial superiority in the area of broadcast experience, in which Community was ranked fourth.

It is apparent, therefore, that the Commission did not predicate its decision solely upon the factor of broadcast experience,

without regard to the other qualities of the applicants, but upon its consideration of the relative qualifications of each applicant as to each of the comparative criteria. While, as we have pointed out, Community was superior to Moline in three areas, the Commission could properly conclude that the "slight degree of superiority in several factors [was] more than offset by substantial inferiority in one." Scripps-Howard Radio, Inc. v. Federal Communications Commission, 89 U.S. App. D.C. 13, 16, 189 F. 2d 677, 680, cert. den. 342 U.S. 830. The question, as this Court stated in the Scripps-Howard case, supra, 89 U.S. App. D.C. at 18, 189 F. 2d at 682, cert. den. 342 U.S. 830, was "one of judgment as to the significance to be accorded greater broadcasting experience in the whole mosaic of the case."

Since the factor of broadcast experience was given decisive weight only after the Commission had determined that no applicant had otherwise demonstrated a preponderant superiority, it was properly permitted to "turn the balance." See McClatchy Broadcasting Co. v. Federal Communications Commission, 99 U.S. App. D.C. 195, 198, 239 F. 2d 15, 18 cert. den. sub nom. Sacramento Telecasters, Inc. v. McClatchy Broadcasting Co., 353 U.S. 918. The "choice of broadcast experience as the decisional keynote" (App. Br. 25) in making the award to Moline, is no more "obscure" here than was the choice of diversification of the media of mass communications in McClatchy. Since the use of broadcast experience as a comparative factor is of long standing, no

additional explanation by the Commission of its use here was necessary.^{13/}

Manifestly, therefore, no basis exists for appellants' contention that illegal emphasis was accorded the factor of experience. Nor is there any basis for the assertion that substantial evidence does not support the Commission's finding that Moline was entitled to a substantial preference in this area of comparison.

Schreiber, Moline's president, who will devote his full time to the operation of the station, has had extensive broadcast experience dating back to 1931 when he became public relations director of WGN in Chicago. In 1941 he assumed the duties of coordinator, which included supervision of all the departments engaged in programing, production, and public relations and the coordination of such operations with the sales and engineering departments. For approximately ten years, beginning in 1946,

^{13/} Broadcast experience gives assurance of effectuation of the proposals advanced by a party and increases the likelihood that the applicant will surmount the numerous operational problems which will unquestionably be encountered in the highly complex business of running a television station. See Television Broadcasters, Inc., 27 F.C.C. 727, 757, 761, 762, 17 Pike & Fischer, R.R. 1169, 1202, 1205, 1206 (where experience was the determinative factor) affirmed, Brown Telecasters, Inc. v. Federal Communications Commission, 110 U.S. App. D.C. 127, 129, 289 F. 2d 868, 870 cert. den. 368 U.S. 916; WHDH, Inc. 22 F.C.C. 767, 861, 862, 882, 13 Pike & Fischer, R.R. 507, 569, 570, 587, remanded on other grounds, Massachusetts Bay Telecasters, Inc. v. Federal Communications Commission, 104 U.S. App. D.C. 226, 236, 261 F. 2d 55, 65, cert. den. 366 U.S. 918; St. Louis Telecast, Inc., 22 F.C.C. 625, 726-728, 12 Pike & Fischer, R.R. 1289, 1381-1383; Queen City Broadcasting Co., 26 F.C.C. 611, 704, 15 Pike & Fischer, R.R. 645, 736; Sucesion Luis Pirallo-Castellanos, 26 F.C.C. 109, 127, 136, 16 Pike & Fischer, R.R. 113, 134, 141.

he was general manager of WGN, Inc.'s television station, WGN-TV, with overall responsibility for its operation, including the production and presentation of locally-originated programs. In addition, Schreiber held various executive positions with WGN, Inc., licensee of WGN-AM and TV, between 1947 and 1956. He was a director of Mutual Broadcasting System from 1949 to 1956, and a director of WPIX, Inc., licensee of WPIX-TV at New York from 1948 to 1956 (32 F.C.C. at 929, 930, 1043, 1070; R. 4588-4593, Tr. 3027-3029, 3052, 3056).

In contrast, the experience of the two persons relied upon by Illiway, which was ranked second in this area of comparison, falls far short of that presented by Schreiber. Joseph M. Baisch, the proposed general manager, was first associated with the operation of a broadcast facility in 1954 when he became general manager of a television station (32 F.C.C. at 930, 1070). The most responsible television experience of John T. Mazzie, the proposed station manager, was in his position as program director, which he has occupied since 1954. In that capacity he supervises and participates in certain phases of television programming under the supervision of the general manager (32 F.C.C. at 930; R. 4158, 4160, 4161). As the Commission found (32 F.C.C. 930), the experience of Baisch and Mazzie does not equal that of Schreiber in time or diversity of activities.

No member of the Atlass family, upon which Midland relies for broadcast experience, has been responsible for the general

management of a broadcast station. Although H. Leslie Atlass, Jr. was associated with broadcast operations between 1945 and 1956, his only experience in television occurred during 1946 in connection with the plans of Columbia Broadcasting System for color television (32 F.C.C. at 930, 999; R. 2209, 2210, Tr. 1245, 1251-1255). Frank Atlass, an employee of the Columbia Broadcasting System since 1950, has devoted most of his time to sales promotion (32 F.C.C. at 930, 1069; R. 2301). Harriet Atlass entered the employ of the Columbia Broadcasting System upon her graduation from college in 1955; her experience has been of comparatively brief duration and has been limited to certain areas of programing (R. 2316).

Community, which was rated first by the hearing examiner in this area of comparison and fourth by the Commission, relies upon the experience of Mark Wodlinger, the proposed general manager. He was a salesman for radio and television stations from 1948 to 1950 and the sales manager of a television station in Davenport, Iowa, from 1950 to 1958 (32 F.C.C. at 928, 930, 944-946; R. 1069-1071, Tr. 911-913). During this period, he worked with the station's program director "in the formulation and preparation of programs bringing ideas to him for program formats" (R. 1071). However, Wodlinger was not the program director, and he had no general managerial responsibility for the operation of the station. As the Commission found, "his

principal activity was sales" (32 F.C.C. at 928).

There was no material difference between the hearing examiner's and the Commission's basic findings concerning Wodlinger's experience, but only as to the inferences to be drawn therefrom. The examiner concluded that Community was entitled to a preference over the other applicants in this area of comparison because Wodlinger's experience was acquired in the area which the proposed station would serve. The Commission concluded that no such preference was warranted since, "whatever significance may be attributed to experience in the locale cannot outweigh the very limited nature of such broadcast experience compared to that represented by Moline, Illiway, and Midland (32 F.C.C. at 930). In the circumstances, the Commission was "completely within its prerogative when it there disagreed with its Examiner." Massachusetts Bay Telecasters, Inc. v. Federal Communications Commission, 104 U.S. App. D.C. 226, 235, 261 F. 2d 55, 64 cert.den. 366 U.S. 918.

The foregoing comparison of Schreiber's experience with that of the principals of Illiway, Midland, and Community ^{14/} supports the Commission's conclusion that "Schreiber's experience has not only extended over a longer period of time than that of any of the others, but the scope of his activities and responsibility has been as broad, and in most instances, broader than that of any of the others." (32 F.C.C. at 930). Appellants' further argu-

^{14/} Tele-Views makes no claim to superiority in broadcast experience of its principals (Br. 37).

ment that, even assuming the superiority of Schreiber's experience, this experience is "more than equalized" by the fact that Schreiber terminated his employment with the television station in 1956 (Br. 36, 37), is insubstantial. The record in this case was closed in 1959, and any argument based upon the last three years is purely conjectural. Moreover, Schreiber became associated with Moline in 1957, about one year after he left WGN, Inc., and he agreed to devote his full time to the management of the proposed station. The lapse of time between his leaving WGN and the holding of this proceeding is of no significance, in the light of his long experience of twenty-five years in positions of the highest responsibility. This experience was not dissipated by his disassociation from the industry for a relatively brief period of time.

With respect to appellant's additional contention that the Commission failed to "depreciate" Schreiber's experience due to the alleged poor performance of station WGN-TV (Br. 38-41), no extended discussion is necessary. Appellants rely primarily upon an alleged failure of WGN-TV to show, when it sought renewals of its license in 1951 and 1953, that it had carried out its program promises. However, while the Commission deferred action on WGN-TV's 1951 renewal to examine into the station's performance, a regular renewal was granted. No finding was ever made by the Commission, and no showing was made here, that the operation of WGN-TV while Schreiber was general manager was sub-standard. The examiner made adequate findings (32 F.C.C. at 1043)

which explain the apparent discrepancies between WGN-TV's promise and performance in its 1951 renewal application, relied upon by appellants (Br. 40). The appellants have failed in their brief to show that the examiner was in error when he found that WGN-TV had in fact put on religious and agricultural programs, although the composite week filed as part of the renewal application did not so indicate.

The other matters relied upon by appellants fail to show any substandard operation by WGN-TV, or even that the allegedly relevant events were ascribable to Schreiber. Thus, the differences in the percentages of time proposed by WGN-TV in 1952 to be devoted to two categories of programs and the percentages shown in the 1953 renewal application, are minimal. The examination by the Commission of WGN-TV's financial condition in 1954 and the failure of the station to join a trade organization (whose code Schreiber testified the station lived up to, Tr. 3133), are not material and have not, indeed, been shown to be attributable to Schreiber. And, while Schreiber stated, as appellants allege (Br. 40), that WGN-TV carried "pitch" commercial programs, Schreiber also testified that the programs were dropped after two times because they were "pitches" (Tr. 3130). In short, no shortcomings in the operation of WGN-TV which would denigrate Schreiber's experience were shown.^{15/}

^{15/} In addition, Schreiber had no ownership interest in the licensee; appellants, while they purport to recognize the distinction between experience and a past broadcast record, in fact confuse the two in urging that any deficiencies in the operation of WGN-TV must be ascribed to Schreiber (App. Br. 38-41). The

In determining that Moline should be awarded the construction permit, the Commission considered all of the relevant facts as to each criterion, evaluated the claims of the competing applicants, explained adequately the reasons for its ultimate conclusion, and rendered a decision which was well within the bounds of its "wide powers of judgment." Tampa Times Company v. Federal Communications Commission, 97 U.S. App. D.C. 256, 259, 230 F. 2d 224, 227. See also, McClatchy Broadcasting Co. v. Federal Communications Commission, 99 U.S. App. D.C. 195, 198, 239 F. 2d 15, 18, cert. den. sub nom. Sacramento Telecasters, Inc. v. McClatchy Broadcasting Co., 353 U.S. 918; Pinellas Broadcasting Co. v. Federal Communications Commission, 97 U.S. App. D.C. 236, 238, 230 F. 2d 204, 206, cert. den. 350 U.S. 1007.

15/ (cont'd) Commission gave Moline a preference on Schreiber's experience; this is not the same as a broadcast record, for the latter factor is present only where an applicant (or a principal in an applicant) was formerly a licensee or substantial stockholder. Television Broadcasters, Inc., 27 F.C.C. 727, 757, 17 Pike & Fischer, R.R. 1169, 1203, affirmed, Brown Telecasters, Inc. v. Federal Communications Commission, 110 U.S. App. D.C. 127, 289 F. 2d 868, cert. den. 368 U.S. 916; Television East Bay, 22 F.C.C. 1477, 1534, 14 Pike & Fischer, R.R. 1, 60c. Only the licensee is responsible for a station's operation and, accordingly, its merits or demerits (which constitute a broadcast record) are generally ascribable only to those legally responsible. The Commission gave weight to the breadth and scope of Schreiber's experience (32 F.C.C. at 930); it did not (as appellants suggest, Br. 41), hold that the preference to be given Moline because of his experience was increased because of the good quality of WGN-TV's operation or of particular programs put on by Schreiber. (See Par. 16, 32 F.C.C. at 930.)

Appellants' reliance on The Toledo Blade Co., 25 F.C.C. 251, 15 Pike & Fischer, R.R. 739, affirmed sub nom.; Great Lakes Broadcasting Company v. Federal Communications Commission, 110 U.S. App. D.C. 88, 289 F. 2d 754, in this connection is misplaced. The person whose experience qualifications were under scrutiny in that case was the vice-president, a director, and principal stockholder of the licensee of the television station which had shown a "pronounced weakness in operation." (25 F.C.C. at 301, 351, 15 Pike & Fischer, R.R. at 792, 822). No comparable situation is here presented.

III. THE COMMISSION'S DECISION COMPLIES
WITH THE REQUIREMENTS OF SECTION 8(b)
OF THE ADMINISTRATIVE PROCEDURE ACT

Appellants contend that adoption by the Commission of the hearing examiner's findings, except as modified in its discussion or in the rulings on the exceptions to the Initial Decision, imposes upon the reviewing court an improper "Herculean task" (Br. 43). This contention is based upon a misconception of appellants' function on this appeal.

Appellants are required to point out in their brief what action of the Commission is erroneous, and it "is not sufficient if it simply invites the court to search the record generally for error." Kincade v. Mikles, 144 F. 2d 784, 786 (C.A. 8). It may indeed be a Herculean task to examine an initial decision, the exceptions filed thereto by five parties (Community, alone, filed 160 exceptions to the findings and conclusions of the hearing examiner), and the Commission's decision (including its rulings on the exceptions), where there is an administrative record consisting of twenty-seven volumes. But this is the burden of appellants and not of the reviewing court.

It is true that the Commission must make adequate findings of fact and rational conclusions, Johnston Broadcasting Co. v. Federal Communications Commission, 85 U.S. App. D.C. 40, 175 F. 2d 351, and that it must make clear its ruling upon each exception, Radio Station KFH Co. v. Federal Communications Commission, 101 U. S. App. D.C. 164, 247 F. 2d 570. But these

requirements clearly were met here, and appellants' apparent complaint against the Commission's form of decision, i.e., the adoption of the bulk of the examiner's decision, is not supported by authority.^{16/} See National Labor Relations Board v. Wichita Television Corporation, 277 F. 2d 579, 585 (C.A. 10), cert. den. 364 U.S. 871; National Labor Relations Board v. Sharples Chemicals, Inc., 209 F. 2d 645, 652-653 (C.A. 6); National Labor Relations Board v. State Center Warehouse & Cold Storage Co., 193 F. 2d 156, 158 (C.A. 9).

Appellants' examples of the "confusion" allegedly resulting from the procedure adopted by the Commission, manifestly fail to show any prejudicial error. Any slight error which is not prejudicial is not grounds for reversal. See Section 10(e) of the Administrative Procedure Act, 5 U.S.C. 1009(e). Thus, there is no "irreconcilable reasoning," as appellants claim (Br. 44), between the Commission's action on Tele-Views' Exception No. 7 (32 F.C.C. at 936) and the conclusion with respect to Moline's program proposals (32 F.C.C. at 925). With respect to Tele-Views, the Commission held that a preference on planning for program proposals was not warranted merely because of the applicant's "effort," i.e., the trouble the appli-

^{16/} Not only is this contention lacking in merit, but the issue is not properly before the Court. Appellants, who did not seek reconsideration pursuant to Section 405 of the Communications Act, 47 U.S.C. 405, failed to afford the Commission an opportunity to pass upon this question and, accordingly, may not raise it for the first time in this appeal. Democrat Printing Co. v. Federal Communications Commission, 91 U. S. App. D.C. 72, 78, 202 F. 2d 298, 303-304.

cant went to. With respect to Moline, the Commission held that no demerit in this area of comparison was required, where familiarity with area needs had otherwise been demonstrated (supra, pp.15-23) merely because the applicant had not conducted extensive surveys. In holding that Moline's "efforts" were sufficient, the Commission obviously used the word "effort" in a different sense than when it ruled on Tele-Views' exception.

In their second example (Br. 44), the appellants allege an inconsistency between the ruling on Midland's Exception No. 4 (32 F.C.C. at 937), with respect to Midland's request for a "strong" preference on integration of ownership and management, and the language of the decision itself which awards Midland a "substantial" preference. But no confusion arises here. The Commission's conclusion is clear and appellants' brief demonstrates (p. 45) that Midland knows what that conclusion is. The Commission's rejection of the language urged by Midland and its use of a differently worded conclusion in the decision, surely raises no inconsistency.

The third example set forth by appellants (Br. 45-46) consists of little more than a repetition of the argument already answered (supra, pp. 31-33) that the Commission failed to "depreciate" Schreiber's experience because of his absence from the broadcasting field in the immediate past and an alleged, but unsubstantiated, record of poor performance (Br. 38). The Commission properly ruled that the examiner's decision contained

the essential facts, and that the additional material would not affect the decision. "The Commission was under no obligation to recite every item of evidence, or of fact, which had some bearing on the questions before it." Mackay Radio & Telegraph Co. v. Federal Communications Commission, 68 App. D.C. 336, 340, 97 F. 2d 641, 645.

Nor, finally, is there any basis for the claim of confusion in the Commission's decision with respect to the broadcast experience of Community's Wodlinger (Br. 46-47). The Commission held that experience in the community to be served did not entitle Community to the preference on the factor of experience awarded by the hearing examiner, where such experience was principally (even though not exclusively) in the field of sales (supra, pp.30-31). There was no conflict between the denial of Illiway's exceptions, as being "cumulative," and the Commission's treatment of Wodlinger's experience in its decision. The Commission treated Wodlinger's experience essentially as Illiway urged, and merely refused to rewrite the examiner's findings, which it considered adequate. The Commission disagreed with the examiner's view of the value of the experience, but this again raises no question of a lack of adequate clarity in the Commission's decision.

No showing has been made that the Commission's findings or conclusions are inadequately stated or that they are so vague as not to permit proper judicial review. On the contrary, the decision complies in every respect with the requirements of Johnston Broadcasting Co. v. Federal Communications Commission,

85 U.S. App. D.C. 40, 175 F. 2d 351, and is valid.

CONCLUSION

For the foregoing reasons, the decision of the Commission should be affirmed.

Respectfully submitted,

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Federal Communications Commission
Washington 25, D.C.

January 4, 1963.

BRIEF FOR INTERVENOR

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION, Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,102

MIDLAND BROADCASTING CO., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

United States Court of Appeals
for the District of Columbia Circuit

No. 17,108

JAN 4 1963

ILLIWAY TELEVISION, INC., Appellant,
v.

Joseph W. Stinson
CLERK

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,110

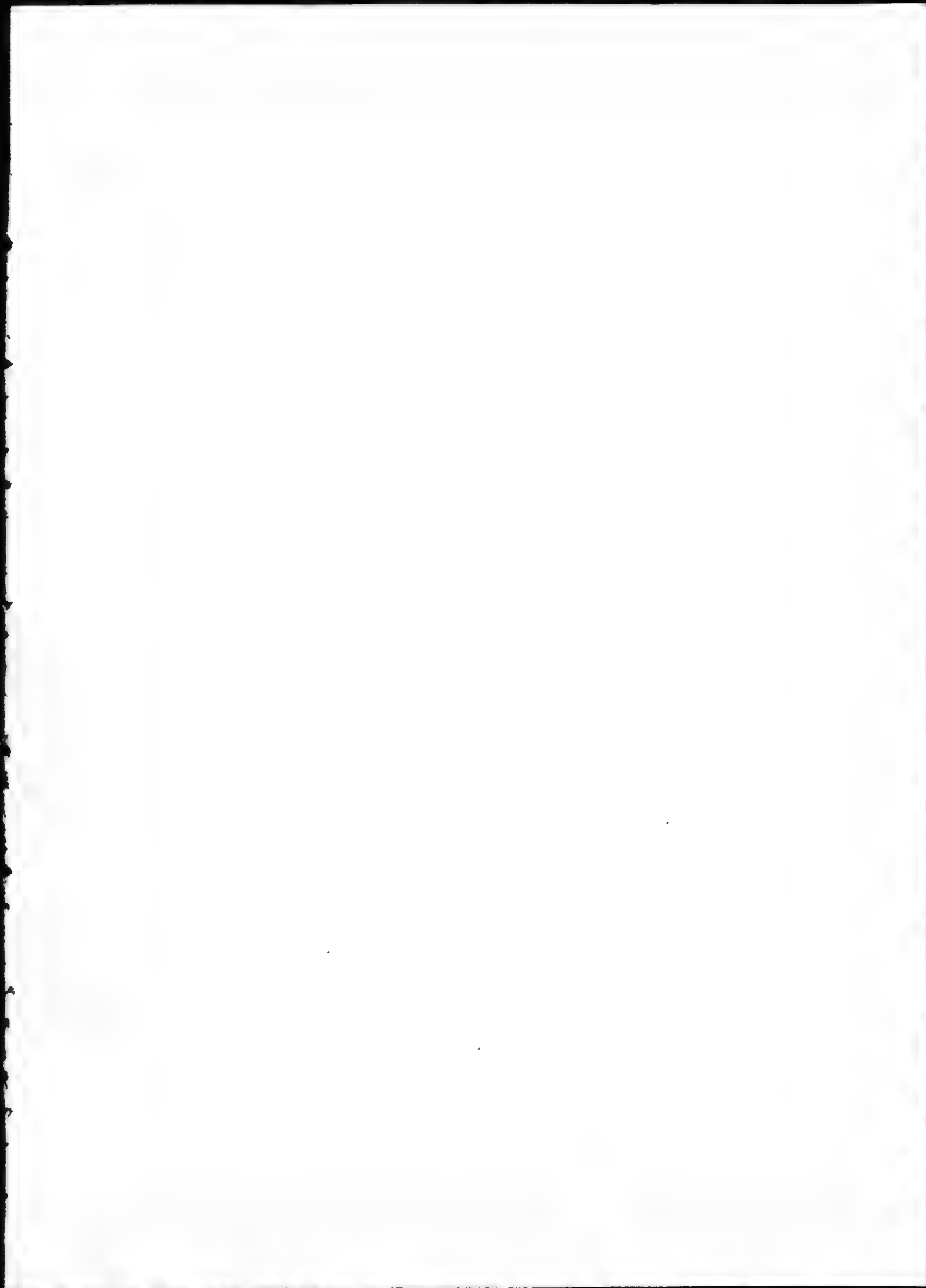
TELE-VIEWS NEWS CO., INC., Appellant,
v.
FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

On Consolidated Appeal from a Decision of the
Federal Communications Commission

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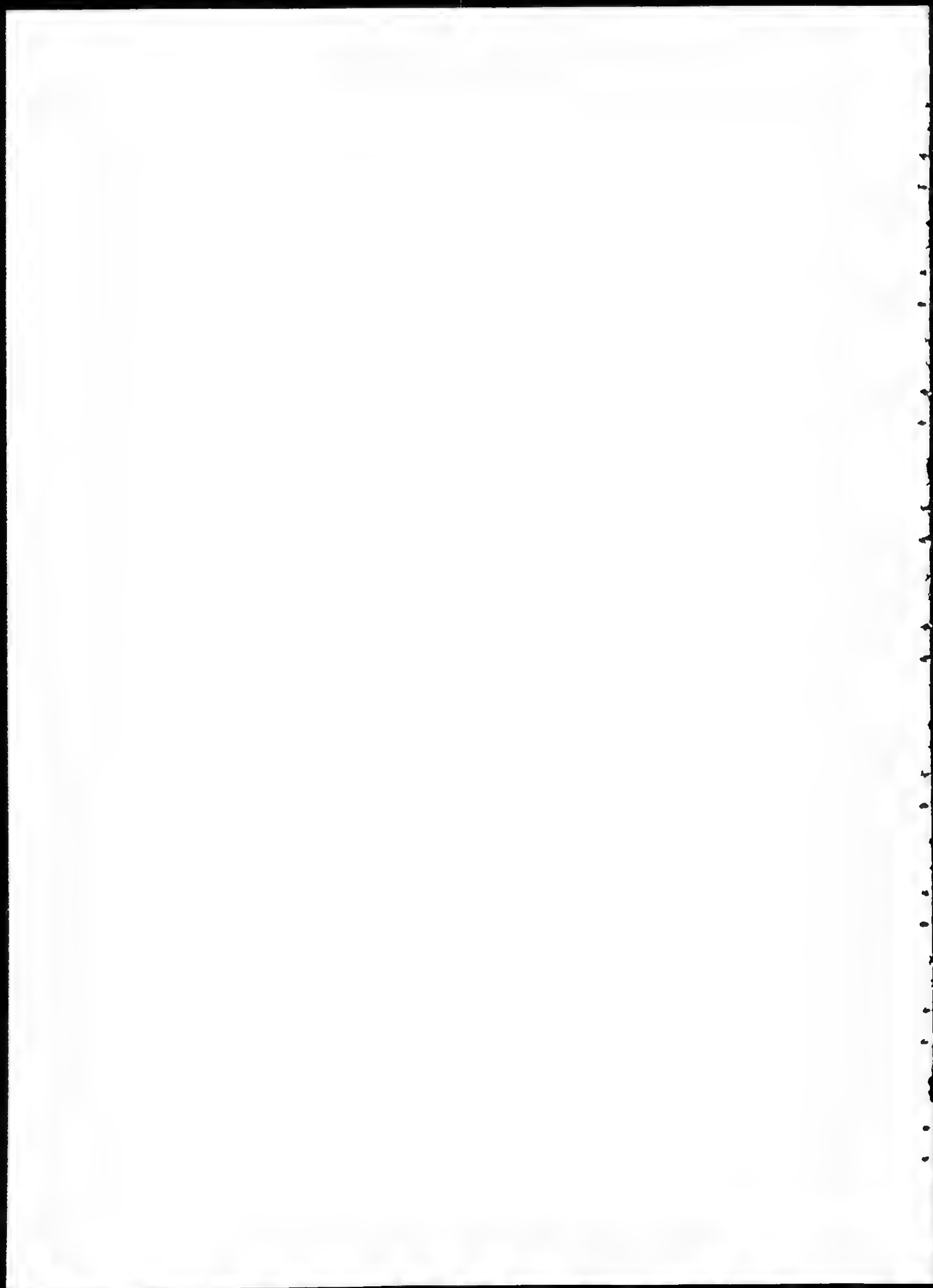


(i)

STATEMENT OF QUESTIONS PRESENTED

The questions which the parties, in a Prehearing Stipulation, agreed were presented in this case are correctly set forth in Appellants' Brief, p. (i). For reasons stated in its "Argument" at pp. 31-32, Intervenor believes that question 1 is not properly before the Court.*

* The right to argue this point was specifically reserved (Paragraph II, Pre-hearing Stipulation, approved September 12, 1962).



(iii)

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* Cases chiefly relied upon by Intervenor are marked by asterisks.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION,	Appellant.
v.	
FEDERAL COMMUNICATIONS COMMISSION, MOLINE TELEVISION CORPORATION,	Appellee, Intervenor.

No. 17,102

MIDLAND BROADCASTING CO.,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION, MOLINE TELEVISION CORPORATION.	Appellee, Intervenor.

No. 17,108

ILLIWAY TELEVISION, INC.,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION, MOLINE TELEVISION CORPORATION,	Appellee, Intervenor

No. 17,110

TELE-VIEWS NEWS CO., INC.,	Appellant.
v.	
FEDERAL COMMUNICATIONS COMMISSION, MOLINE TELEVISION CORPORATION,	Appellee, Intervenor.

On Consolidated Appeal from a Decision of the
Federal Communications Commission

BRIEF FOR INTERVENOR

COUNTER STATEMENT OF THE CASE

While the Appellants in the prefatory part of the statement of the case correctly recite the procedural steps involved in the instant proceeding, a proper understanding of the nature of this case requires the recital of additional facts not contained in the Appellants' statement of the case.

The Nature of the Applicants

Except for the Appellant Midland,¹ all of the applications were submitted by groups substantially controlled by local residents. These individuals² were persons who have been active in the civic affairs of the area and who have served on various judicial, charitable, and governmental bodies of the communities involved. These individuals have resided in the area for long periods of time and included in their midst some of the area's most distinguished citizens.³

The Program Proposals of the Applicants

All of the applicants submitted program proposals in their applications. In order to demonstrate that these proposals reflected the needs of the area, the various applicants submitted diverse evidence to the Commission. Appellant Community indicated that it had conducted several hundred personal "contacts" with the area's civic organizations, but a great number of these contacts were actually completed after the date of the filing of its program proposal.⁴ Insofar as Appellant

¹ The Commission found Moline TV Corp. to be 75% locally owned, and Appellants Community 100%, Tele-Views 100%, Illiway 67%, and Midland 33%. Midland was the only applicant found not to be locally controlled. (Conclusion 5.) (32 FCC 1065.)

² The Commission concluded that except for Midland the applicants were substantially equal in the area of civic activities.

³ In the case of Intervenor, Moline, many of its principals were life-time residents. (32 FCC 1043-1049.)

⁴ See Ruling on Moline Exception 18. (32 FCC 937.) Community also sent out some 700 letters, but received less than 50 replies. (Cf. Tr. 1024 and R. 1091-1095). (32 FCC 937.)

Tele-Views is concerned, its final program proposal was filed with the Commission before it even conducted its first contact.⁵ Appellant Illiway conducted two program plans meetings with local civic leaders and contacted a number of them by mail.⁶ Appellant Midland, the non-locally controlled applicant, made over 400 contacts with various individuals.

Intervenor Moline's stockholders were of the opinion that "... by virtue of their long residence in the area and their own activities in various civic, cultural, and charitable organizations, they themselves possessed knowledge of the area to assess its community needs. They also knew from their own activities that the needs of the area would probably change in the interim between planning and actual operation." (32 FCC 1058.)

Nevertheless, Moline conducted more than a dozen conversations with officials of organizations⁷ representing educational and cultural activities in the area, and, as a result of these conversations, it became apparent to its stockholders that the local organizations would be happy to cooperate but that the organizations thought that "... the most opportune time for such arrangements would not be at that stage of their activities, but when the group was ready to go on the air" because these public service groups felt that the lapse of time would bring about many changes which could alter any plans that may have been made. (32 FCC 1058.)

⁵ See Ruling on Moline Exception 28. (32 FCC 937.) (Cf. R. 6091 and generally R. 1823-1906.)

⁶ One of these meetings took place after the filing of the program proposal (See Ruling on Moline Exception 53.) (32 FCC 937.) (Cf. R. 4477-4494 and R. 7035.) For details of the letter writing campaign see *infra*. p. 14.

⁷ Some of the organizations contacted were the Rock Island public schools, the Moline public schools, Augustana College, St. Ambrose College, Marycrest College, Tri-City Symphony Orchestra, and the Civic Music Assoc. (See Finding 458, 32 FCC 1058.)

In his Initial Decision, the Examiner specifically recognized that Moline's planning was based on the "... intimate knowledge of its officers, stockholders, and directors of the Moline area rather than objective data gleaned from contacts and observations specifically for the purpose." He also noted Moline's position that its principals would remain aware of changing community needs which would render present collections of data obsolete. The Examiner specifically refused to give preference to any applicant on the basis of planning. (32 FCC 1071.)

After reviewing the program proposals of the applicants, the Examiner concluded that "all proposals presented are well-balanced and deserve commendation, specifically in the areas of farm programs and news coverage." He proceeded to give a "slight" preference only to Community on the basis of "... what appears to be a higher percentage of educational programs, all of high caliber." (32 FCC 1071.) The Commission, in considering this conclusion, agreed with the Examiner that all of the applicants presented well-balanced programming proposals but modified that portion of the conclusion giving preference to Community "... solely on the emphasis placed upon one or more categories of programming." The Commission stated that in the absence of a specific showing of a need for a particular type of programming, which was unserved by others, no preference can be granted.⁸ It gave, therefore, parity to all applicants in the field of proposed programming, thereby adding an additional category to the list of comparative criteria in which all applicants enjoyed substantial equality. (32 FCC 925.)

The Proposed Managers of the Applicants

Except for Appellant Tele-Views (Conclusion 24, 32 FCC 1070), each of the applicants proposed as its General Manager a person with some experience in the broadcasting field. Appellant Midland proposed

⁸ This conclusion of the Commission is unchallenged by Appellants.

H. Leslie Atlass, Jr., whose experience in broadcasting was derived primarily in the operation of Radio Station WIND in Chicago (Conclusion 20, 32 FCC 1069). Appellant Illiway proposed as its General Manager Joseph M. Baisch, whose broadcast experience was primarily derived as General Manager of TV Station WREX-TV, Rockford, Illinois, for a period of five years (Conclusion 22, 32 FCC 1070). Appellant Community proposed as its General Manager Mark Wodlinger, the Sales Manager for WOC-AM-FM-TV, Davenport, Iowa, who in addition to his sales activities was engaged in occasional other phases of broadcast operations (32 FCC 945). Moline proposed as its General Manager Frank C. Schreiber, whose experience in broadcasting has been as General Manager for Stations WGN-TV and WGN-Radio, Chicago, for about 15 years and as a Director of WPIX-TV, New York, and Director of a national radio network (32 FCC 1043). Each of these named individuals proposed to devote all of his time to the proposed operation.

In considering the merits of the applicants, the Commission weighed the applicants in respect to its standard criteria. The standing of the applicants in respect to these criteria is stated under Section II infra.

STATUTES AND REGULATIONS INVOLVED

In addition to the statutes in the Appellants' Brief, Intervenor believes that Section 405 of the Communications Act of 1934, as amended, (47 U.S.C. § 405) is also involved. The pertinent portion thereof is as follows:

Communications Act of 1934, As Amended

Sec. 405 (47 U.S.C. § 405): "After an order, decision, report, or action has been made or taken in any proceeding by the Commission, . . . or any other person aggrieved or whose interests are adversely affected thereby, may petition for rehearing only to the authority making or taking the order, decision, report, or action; . . . A petition for rehearing must be filed within thirty days from the date

upon which public notice is given of the order, decision, report, or action complained of. . . . The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such order, decision, report, or action, except where the party seeking such review . . . or (2) relies on questions of fact or law upon which the Commission, or designated authority within the Commission, has been afforded no opportunity to pass . . ."

SUMMARY OF ARGUMENT

1. The contention of the Appellants that the Commission's Decision is contrary to its policy enunciated in the Suburban and related cases is pure makeweight. There is nothing in the Suburban doctrine which is applicable to the instant proceeding. The unchallenged fact that the program proposals of each of the applicants have been found by the Commission to be equally meritorious vitiates the Appellants' argument based upon the Suburban doctrine. It also affirms the correctness of Moline's approach.

The approach taken by Moline, namely, that its local residents should propose programming which is based upon their knowledge of the community derived from many years of residence therein, and civic activity for its benefit, is a rational implementation of the public interest in programming fare. It is in this manner, i.e., the utilization of local residents' knowledge of local conditions, that the entire comparative process becomes meaningful.

2. The Commission's grant to Moline is based upon a complete assessment of the qualifications of the applicants under the Commission's standard criteria. The Commission's grant of a preference to Moline in the area of broadcast experience is rational, sound, and supported by the evidence. The factor of broadcast experience has traditionally been considered by the Commission to be separate and apart from the factor of the broadcast record. This clear separation of the two had been enunciated by the Commission long before the Decision in

the instant case. Toledo Blade Company, 25 FCC 251, 15 RR 739, affirmed sub nom. Great Lakes Broadcasting Company v. Federal Communications Commission, 110 U.S. App. D.C. 88, 289 F.2d 754 (1960). The factor of broadcast experience became a decisive factor because of the substantial equality which the Commission found in most other areas of comparison.

3. The Commission's Decision adequately apprises the parties of the reasons for the conclusions reached in this case. The few isolated examples cited by Appellants are inaccurate. Assuming arguendo, but not conceding, that several minute errors may have been discovered, these do not affect the Decision as a whole.

ARGUMENT

I

THE COMMISSION CORRECTLY AFFIRMED THE EXAMINER'S
CONCLUSION THAT NO PREFERENCE CAN BE GIVEN TO THE
APPLICANTS IN THE COMPARATIVE CRITERION OF PLANNING

A. The Commission's Grant to Moline Comported With its Previous Decisions.

Appellants contend that the Commission erred in not assessing a demerit to Moline for its alleged lack of compliance with the Suburban case⁹ and the Commission's Statement of Policy on Programming.¹⁰ This contention is totally without merit and must be put to rest prior to the disposition of any other contentions in this case.

The facts and principles of the Suburban case were limited both in the Commission's Decision and the decision of this Court. The Commission held that the specific issue on whether program proposals

⁹ Suburban Broadcasters, 30 FCC 1021, 20 RR 951, aff'd. sub nom. Patrick Henry v. Federal Communications Commission, 112 U.S. App. D.C. 257, 302 F.2d 191 (1962).

¹⁰ 20 RR 1901 (1960).

were "designed to and would be expected to serve the needs of the proposed service area" (20 RR 951, 953) could not be favorably resolved by a record which disclosed, according to the decision of this Court, that

"1. None of Suburban's principals were residents of Elizabeth. 2. They made no inquiry into the characteristics or programming needs of that community and offered no evidence thereon. 3. Suburban's program proposals were identical with those submitted in its application for an F.M. facility in Berwyn, Illinois, and in the application of two of its principals for an F.M. facility in Alameda, California." (Numbering and emphasis added.) 302 F.2d at p. 192. (112 U.S. App. D.C. at p. 258.)

The Court, in affirming the Commission's action, stated that

"... the question presented on the instant record is simply whether the Commission may require that an applicant demonstrate an earnest interest in serving a local community by evidencing a familiarity with its particular needs and an effort to meet them." (302 F.2d at p. 194.)

It is submitted that none of these considerations have the remotest applicability to the instant proceeding. In this proceeding the comparable issue on program proposals was resolved by the finding that the program proposals were equally meritorious.

1. Intervenor Moline is a corporation controlled by residents of the Moline area. Many of these individuals are life-time residents. Included among them are individuals of such caliber as: a Commissioner of the Metropolitan Airport Authority and former Assistant State's Attorney and Circuit Judge (Mr. Coyle, 32 FCC 1043); a former member of the East Moline Board of Education and Rock Island County Rent Control Board (Mr. Agnew, 32 FCC 1043); a former president of the Rock Island Chamber of Commerce and a Metropolitan Airport Commissioner (Mr. Day, 32 FCC 1044); an Assistant United States

Attorney, a former member of the Illinois General Assembly, and a member of the Illinois Commission on Higher Education (Mr. Stengel, 32 FCC 1045); a past president of the local B'nai B'rith, a Director of Citizens for Good Government, and past Treasurer of Rock Island Community Chest (Mr. Gilman, 32 FCC 1045); a former member of the Moline School Board, former President of Little Theater Group, and Director of the Moline Red Cross (Mr. Ainsworth, 32 FCC 1045); a former master in chancery of the Circuit Court of Mercer County and President of Mercer County Infantile Paralysis Society (Mr. Davis, 32 FCC 1046); a former chairman of the River Filtration Plan, and Director of the East Moline Association of Commerce (Mr. Dowsett, 32 FCC 1046); a former post commander of the East Moline American Legion, a former State Senator and Commissioner of Illinois Commerce Commission (Mr. Harper, 32 FCC 1046); a sitting judge of the 14th Judicial Circuit of Illinois, a former State's and City Attorney, member of Selective Service Advisory Board, and Member of Rivers and Harbor Congress (Mr. Hebel, 32 FCC 1046); a former president of the Moline Board of Education (Mr. Peterson, 32 FCC 1048); a member of the Mississippi Valley Fair Board, former County Attorney and Circuit Judge (Mr. Rehling, 32 FCC 1048); and a member of the Executive Board of Moline Lutheran Hospital and member of Citizens Advisory Committee (Dr. Helfrich, 32 FCC 1052).

The Commission's Findings contain numerous additional local civic activities of these and other members of Moline's Board of Directors (see generally 32 FCC 1043-1050). The mere recital of these facts points up the total inapplicability of the Suburban case.

2. The Directors of Moline imbued with their own knowledge of the area, based upon many years residence and civic activities, have made an inquiry into the characteristics or programming needs of the community. That inquiry was much more concrete and meaningful

than some of the synthetic methods used by its competitors.¹¹

This inquiry was primarily directed to themselves. The Board of Directors of Moline was composed of twenty-three individuals, twenty of whom were long term local residents and civic leaders. (Findings 433-454, 32 FCC 1043-1049.) Since these Directors spanned the spectrum of the area's civic life, they were indeed qualified to so inquire of themselves. The decision recites in detail the contribution of the individual directors to the programming proposals of Moline. Thus, for example, Moline did not need to inquire of others whether or not there was a Better Business Bureau in the area, since one of its own Directors, a former president of the Rock Island Chamber of Commerce (32 FCC 1041) knew in fact that there was none. This knowledge contributed to the definition of the station's commercial policy (Finding 457(d), 32 FCC 1051).

In planning the safety programs of the station, Moline did not need to inquire of others as to the day on which workers were most accident prone since one of its own Directors, Dr. Helfrich, specializes in the problems of industrial safety and accident prevention. His knowledge resulted in recognition of the need for safety campaigning, especially on weekends. (Finding 457(e), 32 FCC 1052.)

Intervenor Moline, however, went further than the utilization of the knowledge of its own directors. As the Commission found, members of the Intervenor visited more than a dozen representatives of public schools, universities, colleges, and cultural organizations ". . . to secure commitments from these individuals as to various programs." (32 FCC 1058.) After discussions with these groups, it became apparent, and was so concluded, that the most opportune time for making specific arrangements was at the time the station was ready to go on the air, not

¹¹ The methods of ascertaining community needs used by the other parties in this proceeding will be discussed later on. See *infra*. pp. 13-14.

at a time many years prior to air time. The ultimate program policy of Moline specifically looks toward cooperation with and fostering of organizations serving the public in the area. (32 FCC 1059.)¹²

Time has proved the Intervenor's analysis to be correct. Over 4 1/2 years have now passed since the time this case was designated for hearing, and no station on Channel 8 is yet on the air in Moline, Illinois.

It is submitted that in a field as fluid as television,¹³ and in view of the Commission's own recognition that the needs of the area may constantly change, Moline's assessment of its own programming policy was indeed a correct one.

3. The third aspect of the Suburban case involves the identity of an applicant's program proposals with those made in other cities as a reflection of that applicant's interest in and familiarity with the area to be served. This aspect is totally inapplicable to this case since both the Examiner and the Commission found that the program proposals of all applicants were meritorious, responsive to the needs of the area, and substantially equal. There is no allegation, of course, that Moline's program proposals were even similar to proposals in any other FCC application.

Thus, on each of the three aspects of the Suburban case, it must be concluded that it is inapplicable to the instant proceeding.

The next consideration involves the compliance with the Policy on Programming. The Policy on Programming was primarily a review of the powers and limitations of the Commission in the field of broadcast

¹² This policy is in accord with the Commission's language in WSTE-TV, Inc. 23 RR 804 (1962), where the Commission stated "Far from being a situation such as Suburban, where the applicant failed to make any efforts to ascertain the needs of the community or to meet such needs, we are here faced with an applicant cognizant of its responsibilities to continue its efforts to provide a better program service to the public." (23 RR at 810.)

¹³ Roe, The Television Dilemma, New York (1962), pp. 11-26.

programming and a discussion of possible means by which licensees could make it possible for the Commission to discharge its delineated responsibilities. In summarizing the licensee's duties, the Commission stated:

"... the principal ingredient of the licensee's obligation to operate his station in the public interest is the diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his community or service area, for broadcast service." (20 RR 1901, 1915; emphasis added.)

The Commission immediately thereafter set forth its proposal to revise Part IV of the application form pertaining to programming to require information as to:

- (1) The measures taken by the applicant to determine the tastes, needs and desires of the community, and
- (2) The manner in which he proposed to meet those needs and desires.

The Commission's statement concluded "Upon completion of that study we will announce, for comment by all interested parties, such further revisions to the present reporting requirements as we think will best conduce to an awareness, by broadcasters, of their responsibilities to the public and to effective, efficient processing, by the Commission, of applications for broadcast licenses and renewals. To this end, we will initiate further rule making on the subject at the earliest practicable date." To date, the Commission has not revised its forms to encompass the reporting requirements recited above.¹⁴

The quotation set out on pages 11 and 12 of the Appellants' Brief represents an out of context analysis of the supporting rationale for a rule which has not yet been adopted.

¹⁴ On February 21, 1961, the Commission instituted rule making proceedings embodying some of the proposals contained in the Policy on Programming, Docket 13961, 26 F.R. 1670. These proceedings are still pending.

Be that as it may, an analysis of the Commission's Policy on Programming nowhere spells out the manner in which the consultation with leaders in community life must be carried out. As pointed out at page 10, supra, the preparation of the programs of Moline was based upon the knowledge of area leaders of the needs, tastes, and desires of the area. The fact that these area leaders are also stockholders and directors of Moline does not adversely affect the information secured. In seeking out the needs of the Board of Education for example, Moline has before it a person qualified to present such needs, namely, Mr. Peterson, a president for two years and a member of the Board of Education for six years. (Finding 457(p), 32 FCC 1056.)

The fact that the Board of Directors of Moline contains such prominent civic leaders assures it of the very continuing awareness of community needs which the Commission expects of its licensees and which it sets out in its Policy on Programming.¹⁵

Thus, the weakness which the Appellants claim in Moline's case turns out to be its great asset since the Commission can thus be assured that the proposals made in this hearing are not a result of "gamesmanship" or for tactical advantage, but, on the contrary, that they are seriously advanced and seriously regarded in actual operation. Tide-water Teleradio, Inc., 24 RR 653 (1962).

This point becomes significant when considered with the perfunctory and often cynical approach of the Appellants in their "extensive and assiduous efforts to determine the needs and tastes of the community and service area . . ."¹⁶

Appellant Tele-Views made no community surveys at all until after it had filed its final program proposal. (Cf. generally R. 1823-

¹⁵ Of course, the Commission does not require an applicant to investigate every aspect of a large community. Herbert Muschel, 23 RR 1059 (1962).

¹⁶ Appellants' Brief, page 14.

1906 and R. 6091.) See also Ruling on Moline Exception 28. (32 FCC 937.)

Appellant Community, according to the testimony of one of its own principals, instituted the program of contacts for the avowed purpose of meeting the Commission's criterion of ownership and management. (Tr. 1025-1029.) In fact, over half of its personal contacts were made after the execution of its last programming amendment. (Cf. Tr. 752 and generally R. 1054-1256.) The effectiveness of the letters to approximately 700 individuals and groups referred to on page 15 of the Appellants' Brief can be measured by the fact that less than 50 of the addressees even bothered to reply. (Cf. Tr. 1025 and R. 1091-1095.) The epitome of this exultation of form over substance was reached when Community addressed a letter offering its facilities and asking for suggestions from none other than Harold W. Hoersch, one of its own Vice Presidents and Directors.¹⁷

The last programming amendment to the Illiway application was filed with the Commission on June 12, 1957. (Tr. 1975.) Prior to that time, Illiway had a luncheon meeting with 15 educational and religious leaders of the area. The whole meeting, including lunch, lasted 1 hour and 50 minutes.¹⁸ In addition, Illiway sent out a number of form letters over the signature of its stockholders. In forwarding these form letters to the stockholders, Mr. Boeye, one of Illiway's principals, indicated that if they did not have time to type and sign them, he would do it for them, and in fact did so for at least one of the stockholders. (Tr. 2084.)

The next case cited by the Appellants in their attempt to prove a departure from the Commission's Policy on Programming is KORD,

¹⁷ R. 1543.

¹⁸ (Tr. 2093-2094)

Illiway also had a plans meeting with 30 civic leaders on June 26, 1958, but by then its programming had already been filed with the Commission. (R. 4477-4494.) See ruling on Moline Exceptions 72, 73. (32 FCC 937.)

Inc.¹⁹ However, the Appellants themselves recognize in their own Brief (Appellants' Brief, p. 17) that KORD has no bearing at all on the instant proceeding. In KORD, the Commission said that it expected its licensees to fulfill their programming promises. The Appellants' statement that KORD ". . . clearly affirmed the great importance of community contacts and was based on the Commission's Policy on Programming" (Appellants' Brief, p. 13) is not correct. While KORD cited the Policy on Programming, it made no reference to contacts concerned as it was with a fulfillment of programming proposals. Indeed, under Moline's approach, its promises are most likely to be fulfilled since they represent the responsible views of the directors rather than being vaguely related to a one-shot survey.

One other remaining case relied upon by the Appellants in support of their contention is Herbert Muschel, 23 RR 1059 (1962).

In Muschel, each of the three mutually exclusive applicants proposed a "specialized service" for a proposed FM station in New York City. One applicant proposed an exclusively "news" station. Another applicant proposed specialized promotional assistance to independent grocers and other businesses. A third one proposed principally programming for a Negro audience.

In view of the proposals to utilize the broadcast spectrum for such specialized type of operation, the Commission remanded the proceeding to the Examiner for further hearing to determine the substantial basis for the specialized program proposals.²⁰

The Final Decision in Muschel, far from supporting the views of the Appellants, supports the position taken by Moline. The successful applicant, Novik, had utilized the knowledge which he had gained from

¹⁹ KORD, 31 FCC 85, 21 RR 781 (1961).

²⁰ Herbert Muschel, 20 RR 900 (1960), 20 RR 902(a) (1961).

civic activities, business associations over the years, and a long standing acquaintance with various prominent government officials, labor leaders, educational leaders, philanthropic and welfare organizations.²¹ Novik had not discussed the "... specific FM programming proposals he had in mind."²² There is no indication that he engaged in an additional survey of any kind. It is the substance of the Muschel case which must be considered rather than the isolated dicta cited by the Appellants.²³

The entire thrust of the Commission's Decisions has been to point up that the Suburban doctrine proscribes the grant of a license to strangers unfamiliar with the area in question. Thus, in Community Service Broadcasters, Inc., 22 RR 814 (1962), the Commission refused to add a "needs ascertainment issue" where it appeared that the applicant was a life-long resident of the area and had discussed the problems of the area with at least one prominent resident of the community. This action of the Commission was in spite of the fact that that applicant's programming proposal was similar to one contained in an application for another city. Similarly, in Peace River Broadcasting Corp., 23 RR 1218 (1962), an applicant was granted a construction permit where it appeared that his knowledge of the area was gained from sporadic visits to the community for business purposes, during which visits he had

²¹ Herbert Muschel, 23 RR 1059, 1085 (1962).

²² Herbert Muschel, 23 RR 1059, 1066 (Final Decision).

²³ Appellants' reference to Bootheel Broadcasting Company, 24 RR 292 (1962), as evidence that the Review Board interprets the Commission's Decision as equating residence with ascertainment of area needs is incorrect. In that case the applicant had made over 100 "contacts" with local citizens in addition to long-time residence in the area. If, as appellants argue, the Review Board's decisions represent a proper interpretation of the Commission's Decision, that Board has interpreted the Suburban doctrine in the following language: "However, where, as here, the program schedule was based on a general knowledge of the area and the applicant has demonstrated cognizance of his responsibilities as a (prospective) licensee, the Board is satisfied that the Commission's requirements in this area of concern have been met." Saul M. Miller, 24 RR 550, 553 (1962). In the Miller case, the applicant prepared his proposal on the basis of Chamber of Commerce literature and like material, and it was not until later that he undertook to make a survey of any kind.

casually discussed radio programs with some 25 persons he met at filling stations, restaurants, etc. This, it was held, met the requirements of both Suburban and the Policy on Programming. In that particular case, the hearing was held under a specific issue in which the applicant's efforts to determine the needs of the area were explored because of a similarity of his proposals to other applications.

B. The Unchallenged Parity in Programming Confirms the Correctness of the Commission's Affirmance of the Examiner Under the Planning Criterion.

The Appellants are quite correct in their reference to this Court's language in Johnston Broadcasting Company v. Federal Communications Commission, 85 U.S. App. D.C. 40, 48, 175 F.2d 351, 359 (1949).

"... in a comparative consideration, it is well recognized that comparative service to the listening public is the vital element, ..."

Programming is indeed the very touchstone of the comparative process.

After a painstaking and thorough review of the program proposals of all of the applicants, the Commission concluded that "no significant differences exist in the area of programming." (32 FCC 925.) In reaching this conclusion, the Commission examined not only the percentage analysis of the various proposals submitted by the applicants, but each one of their individual programs. (32 FCC 963-969 for Appellant Community; 32 FCC 982-989 for Appellant Tele-Views; 32 FCC 1007-1012 for Appellant Midland; 32 FCC 1034-1039 for Appellant Illiway; and 32 FCC 1059-1063 for Intervenor Moline.)

The Commission agreed with the Examiner that "... each of the applicants proposes a well-balanced program schedule ..." The Commission specifically rejected the slight preference given to Community because of Community's emphasis on educational programming because that Appellant had neither shown that the "... judgment of the other

parties was unreliable, [n]or that there was a particular community need requiring a greater than usual emphasis on a given category of programming . . ." (32 FCC 925.) The conclusion of parity of programming proposal is not challenged by the Appellants. Thus, we have before us five applicants who by various methods have arrived at programming judgments, each of which has been found by the Commission to be responsive to the area's needs.

Judge Friendly, in his analysis of FCC licensing procedures, concluded that:

"As I review the decisions, there are only two true elements of policy — the community should have the programs best adapted to its needs, and this goal should be achieved in a manner that will avoid undue concentration of the media of mass communication, nationally, regionally, or locally. Most of the so-called criteria are simply a check-list of evidentiary items bearing, some directly and others indirectly, on an applicant's ability to achieve one or the other or both of these policy goals." Friendly, The Federal Administrative Agencies: The Need for Better Definition of Standards, 75 Harv. L. Rev. 1055, 1060. (Emphasis added.)

In view of the admitted parity of programming, Appellants' arguments that the Commission must emphasize form (i.e., the various methods of arriving at the program proposals) over substance (i.e., the program proposals themselves) is clearly unmeritorious. In essence, Appellants would insist that their method of planning is the only proper method even though the Commission and the Examiner found that all applicants had conducted their planning in an adequate manner and that each applicant had achieved substantial equality of programming as a result of its planning.

Under the Appellants' view, Moline should be punished for utilizing to their fullest extent the factors of local residence, civic activities, and

business interests of its principals. The mere statement of the proposition indicates its untenability.

II

THE COMMISSION PROPERLY EVALUATED ITS CRITERIA AND CORRECTLY APPLIED THE WEIGHT TO BE GIVEN THESE CRITERIA.

All the applicants in this case are legally, technically, and financially qualified to operate the proposed station.²⁴ After an exhaustive proceeding, the Commission considered the case on 10 of its traditional criteria. In determining the standings of the applicants under these criteria, the Commission reached the following conclusions:

1. Planning - All applicants equal. (Conclusion 5, 32 FCC 925.)
2. Studios, Staffing, and Equipment - All applicants equal. (Conclusion 5, 32 FCC 925.)
3. Policies - All applicants equal. (Conclusion 5, 32 FCC 925.)
4. Programming - All applicants equal. (Conclusion 5, 32 FCC 925.)
5. Diversification of Media of Mass Communication - Community, Tele-Views, and Midland, a "slight" preference over Moline, moderate preference over Illiway. (Conclusion 6, 32 FCC 925.) The preference given the other applicants over Moline in this respect was "... attributable solely to the fact that one of its Directors [Mr. Harper, a 1% stockholder] owns a majority of the stock in a weekly newspaper with a circulation of 7,000 - 7,200 in the area east of Moline." (32 FCC 925.) The Commission stated that "Since this area is serviced by four daily and two weekly newspapers, with a number of broadcast stations (AM-

²⁴ Although the hearing order included an issue as to the financial qualifications of Appellant Tele-Views, the Commission concluded that Tele-Views was in fact financially qualified. (Conclusion 4, 32 FCC 924.)

FM-TV), we attach very slight comparative significance to the ownership of the weekly newspaper by one of Moline's directors." (32 FCC 926.)

6. Diversification of Business Interests - Illiway, Community and Moline share a slight preference over Midland and Tele-Views. (Conclusion 7, 32 FCC 926.)

7. Civic Participation - Moline, Community, Illiway, and Tele-Views equal, and preferred over Midland. (Conclusion 8, 32 FCC 926.)

8. Local Residence - Community, Tele-Views, Illiway, and Moline entitled to a substantial preference over Midland (33% local ownership). As between themselves "... only very slight preferences were awarded": first, Community (100% local ownership); second, Tele-Views (87% local ownership); third, Moline (75% local ownership); and fourth, Illiway (67% local ownership). (Conclusion 9, 32 FCC 926.) The Commission also found that all of Moline's stockholders were directors and that twenty of the twenty-three directors were local residents. (Finding 429, 32 FCC 1041.)

9. Integration of Ownership and Management - Tele-Views makes the weakest showing The next weakest showing was made by Illiway. Community was entitled to "a degree of preference over Moline" because more of its stockholders will devote substantial periods of time to the station. Midland made the strongest showing, and was entitled to a substantial preference. (Conclusion 12, 32 FCC 928.)

10. Broadcast Experience - . . . Moline was rated first; as between Midland and Illiway, the latter was preferred. Community was rated fourth, and Tele-Views ranked last. (Conclusion 16, 32 FCC 930.)

It can thus be seen that the Decision was a close one and the distinctions between the applicants were often small. In this respect, the case was much like Sacramento Broadcasters, Inc. v. Federal Communications Commission, 98 U.S. App. D.C. 394, 236 F.2d 689 (1956),

which prompted this Court to say that:

"The case is a trying one, for Broadcasters stood so well before the Commission in comparison with KCRA. One 'spotty' place in its overall fine qualifications assumed unusual importance. But this occurred only because the case was so close. And a slight difference may be decisive when greater differences do not exist." (98 U.S. App. D.C. at 398, 236 F.2d at 693.)

A. The Commission Properly Awarded Moline a Preference in the Field of Experience.

The Appellants' contentions regarding the factor of experience can be broken down as follows:

a. The Commission erred in giving Moline a preference in the field of experience because of the alleged weakness in the programming of a station managed by Mr. Schreiber.

b. The Commission erred in allotting the weight it had given to the criterion of experience in considering the overall balance of criteria.

1. The Commission Properly Refused to Consider Past Performance of Managed Stations Under the Criterion of Broadcast Experience.

This Court has held that the sphere of comparative experience of the applicants is a matter peculiarly within the province of the Commission, Brown Telecasters, Inc. v. Federal Communications Commission, 110 U.S. App. D.C. 127, 289 F.2d 868, cert. den. 368 U.S. 916 (1961). Since, however, the Appellants have raised the point in their Brief, Intervenor believes that the contention that the Commission erred in this respect should be put to rest.

The Commission found that Schreiber was the General Manager of WGN-AM-TV, and that he owned no stock in the licensee corporation. (32 FCC 1043.) In considering his broadcast experience, the Commission

evaluated it under a long standing definition of that factor, namely, "we are here concerned with the 'know-how' which the principals of an applicant may have acquired through participation in broadcast operations and which may be of aid to the applicant in carrying on its TV operation," The Radio Station KFJH Company, 11 RR 1, 112 (1955), reversed on other grounds, Radio Station KFJH Company v. Federal Communications Commission, 101 U.S. App. D.C. 164, 247 F.2d 570 (1957). (Emphasis supplied.) On the other hand, a broadcast record - the evidence of a party's awareness of local needs - ". . . must be readily identifiable with the applicant," Radio Wisconsin, 10 RR 1224, 1240 (1955).

The limitations upon the principle of broadcast experience were succinctly delineated in the Toledo Blade Co., 25 FCC 251, 15 RR 739, affirmed sub nom., Great Lakes Broadcasting Corporation v. Federal Communications Commission, 110 U.S. App. D.C. 88, 289 F.2d 754 (1960), where the Commission specifically reversed the Examiner and stated:

"The Examiner considered past broadcast records and broadcast experience as a single comparative criterion. This was error. The Commission has consistently considered these factors separately, holding each was entitled to independent appraisal and weight. See WHDH, Inc., 22 FCC 767, 861, 866; and Biscayne Television Corp., 22 FCC 1464, 1467. Accordingly, the exceptions to the Examiner's joint consideration of these factors will be granted." (15 RR at 825.)

This very point, namely, the complete separation of the two criteria, was presented to this Court in the Great Lakes case, supra, and was fully briefed by the parties. (Brief for Appellant, pp. 26-30, Intervenor, pp. 21-24, Appellee, pp. 22-30.) In that case, the Appellant contended that the Commission erred in not awarding him credit in the area of past broadcast experience because of the alleged excellent record of performance of a station of which the Appellants' principal was general

manager.²⁵ The Court held "Appellants' other contentions also provide no basis for disturbing the Commission's action." (110 U.S. App. D.C. at 90, 289 F.2d at 756.)

It thus follows that the Commission properly refused to consider the performance of WGN-TV under the factors of broadcast experience of Mr. Schreiber.²⁶

Lest there be any impression left that the Commission's proper refusal to consider the broadcast performance of the licensee of WGN-AM-TV, in any way obscured a bad record of the stations, the following facts are among those of record which would bear on an evaluation of past performance:

During Mr. Schreiber's tenure as General Manager of the radio and television stations, the stations developed an outstanding independent news department with complete film and photographic coverage; on radio, a regular and extensive series of farm programs, including daily talks by authorities in the field; a music department originating live music programs over both radio and television which were in addition to the weekly full hour concerts of the Chicago Symphony Orchestra. Under Mr. Schreiber's auspices, WGN-TV created "Spotlight on Chicago," which was designed to bring to the public full knowledge of the city administration. The program often times resulted in exposes of law enforcement agencies and at all times was designed to fully present matters of a controversial nature. In addition, Mr. Schreiber

²⁵ Appellants' reference to the Toledo case insofar as the experience of Mr. Gross is concerned is misplaced since Mr. Gross was more than just a general manager of WJIM-TV. The Commission's Decision indicated that Mr. Gross was president, director, and principal stockholder of the licensee of WJIM-TV, Toledo Blade Company, 25 FCC 251, 295. In the instant case, Mr. Schreiber was merely the general manager.

²⁶ The Commission similarly refused to consider alleged deficiencies in the operation of Station WREX-TV of which Mr. Baisch, a principal of Illiway, was General Manager, as well as a minor stockholder of the licensee of WREX-TV. (32 FCC 1019). The Commission's reason was the same as its ruling on Community Exception 130 and Illiway Exception 29 pertaining to the record of WGN-TV under Mr. Schreiber's managership.

personally developed the program entitled "Press Conference" and participated in the origination and development of the pre-school child program "Time for Adventure," a daily thirty-minute program presented by an employee of the Chicago Board of Education (R. 4588-4592).

The Appellants' bare recital of statistical facts from the composite week contained in the WGN-TV renewal applications is meaningless since, as the Commission has stated, these statistical facts are merely a tool for analyzing station performance but not a full measure thereof.²⁷ In fact, the Examiner and the Commission specifically found that the renewals were granted upon the basis of supplemental information covering performance of WGN-TV not reflected in the composite week statistics. (See Footnote 17, 32 FCC 1043.)

2. The Commission Properly Preferred Schreiber's Experience Over the Principals of Other Applicants.

Except Moline and Illiway, no applicant contained a principal who had ever managed a television station. Regarding Community's Wodlinger, the Commission found that he "... in 1950, became Sales Manager for WOC-AM-FM-TV, a position which he held until October 1, 1958 ..." (32 FCC 945). Thereafter, in several paragraphs, the Commission described his activities outside the field of sales. The mere recital of these facts emphasizes that Wodlinger was primarily a salesman since apparently these activities were out of the ordinary routine.²⁸ Because of this limitation, it found him inferior to those individuals who have had actual broadcasting experience on a regular basis (Conclusion 16, 32 FCC 930).

Insofar as the three Atlases are concerned (Midland), Leslie Atlass for eight years was Program Director of Radio Station WIND, Chicago. His other experience was in radio except for his employment

²⁷ Policy on Programming, 20 RR 1901, 1913 (1960).

²⁸ The Commission has held that operation or programming experience is more important than experience in salesmanship, Triad Television, 25 FCC 848, 16 RR 501 (1959).

by the Columbia Broadcasting System in Chicago as head of its Television Department. Frank Atlass, II was a producer on WBBM-TV and at the close of the record was a Sales Manager. While he produced certain shows he never managed that station. Miss Harriet Atlass produced three television shows for WBBM-TV and from time-to-time produced other television shows.²⁹ (32 FCC 1000.)

Appellant Tele-Views did not even propose anyone with any experience in managing a television station. Therefore, the comparison can and need only be made between Schreiber and Baisch. In the comparison of the two, Schreiber presents a greater degree of experience. He has guided from its infancy a television station and served as a director of another television station (WPIX, New York); he represents more than double Baisch's stock ownership. In addition to television experience,³⁰ Schreiber had 15 years of radio experience, both as a General Manager of a station and as a director of a national network. (Finding 432, 32 FCC 1043.) Baisch had none.

The rationale for considering experience as a General Manager — with overall responsibilities for all facets of operation — as superior to the specialized experience of the Atlasses and Wodlinger can best be realized from the Commission's own definition of the meaning of the term (WHDH, Inc., 13 RR 507, 569, affirmed sub nom. Massachusetts Bay Telecasters, Inc. v. Federal Communications Commission, 104 U.S. App. D.C. 226, 261 F.2d 55, cert. denied, WHDH, Inc. v. Federal Communications Commission, 366 U.S. 918 (1958)).

²⁹ The Commission has previously held that managerial experience is to be preferred over experience in preparing and producing programs. The Young People's Church of the Air, 28 FCC 617, 18 RR 947 (1960).

³⁰ The record closed on September 24, 1959. Baisch had television operating experience totaling 5 years, Schreiber 15 years. (Findings 344 and 432.) (32 FCC 1020, 1043.) The Commission does not consider activities after the closing of the record, unless the record is reopened for that purpose. (Sacramento Broadcasters, Inc., 10 RR 615 (1955).)

"Under this issue [i.e., experience] the Commission can measure the likelihood of an applicant giving both early effectuation to the proposals it makes in hearing through application on the part of the applicant of judgment gained through actual knowledge and experience in operation, and the effectuation of such proposals as well as adjustment thereof to industry conditions and changing local interests as they arise upon a continuing basis. Broadcasting is a specialized and constantly developing industry, and one in which the application of specialized skills, as well as mature business judgment (particularly that gained in active broadcast operations and policy making) acquired through a substantial period of experience is considered by the Commission to result in constantly improving programming service in the public interest. It is the experienced operator who knows that which is practicable from that which is impracticable; who knows the limitations present in working with local groups and organizations; who knows how to operate within the framework of the Communications Act, the Commission's Rules and industry practices; and how to successfully operate the station. Thus, broadcast experience is an important factor in assessing the likelihood of effectuation of the proposals advanced; proper assessment of and the meeting of community needs on a continuing basis; and of a successful operation. Comprehensive broadcasting experience is acquired only through the labor of years; and the fruits of such experience bear valuable contributions to programming in the public interest."

B. The Commission Properly Considered the Factor of Experience in Evaluating the Relative Weight to be Given to the Comparative Criteria.

Appellants next contend that the Commission gave undue weight to the factor of experience in considering the merits of the respective applicants. In considering this argument, it must be remembered that in comparative cases there is no fixed weight to be attached to each criterion. The importance to be given individual criteria differs from

case to case, and the Commission is given wide latitude in evaluating the importance of these criteria.³¹

Appellants are in error when they state that the Commission had never used broadcast experience alone as a ratio decidendi. As early as 1940, the Commission awarded a construction permit to an applicant where the sole reason for preferring one over the other was that the successful applicant has had "considerable experience in the management and conduct of radio broadcasting stations and would thus bring to the operation of the frequency . . . qualifications not possessed by . . . [principals of the unsuccessful applicant] who have had no experience whatsoever in the operation of a broadcasting station." Martinsville Broadcasting Company, 8 FCC 46, 53 (1940).

Historical precedent aside, in this case the Commission had before it a difficult choice. The selection of a successful applicant from among five basically qualified groups called for close weighing of the scales, and even the dissenting Commissioner noted that fact. (32 FCC 938.)

In light of these circumstances, the Commission's awarding a considerable weight to the criterion of experience is a reasonable exercise of its administrative expertise since experience has the quality of assuring the proper effectuation of the program proposals which proposals the Commission had found to be equally meritorious. (32 FCC 925.)

The Commission stated the proper weight to be given that factor in St. Louis Telecast, Inc., 12 RR 1289 (1957):

"Under this criterion the Commission evaluates the amount of experience in the field of broadcasting that the applicants, through their principals, will bring to bear on the proposed operation. The experience which the applicant brings to the day-to-day

³¹ Pinellas Broadcasting Company v. Federal Communications Commission, 97 U.S. App. D.C. 236, 230 F.2d 204 (1956), cert. denied 350 U.S. 1007.

operation of the station and the experience which forms the basis for policy creation and execution at the official or directorial level are both relevant considerations here since both are vital to the successful broadcast operation." (12 RR at 1381.)

In that case the factor of experience, associated with a commendable past performance of the applicant, was held to outweigh such considerations as local ownership, non-multiple ownership, and civic activities, and resulted in a grant to CBS, a nation-wide television network, owner of a number of television stations in major markets, none of whose principals had ever resided in St. Louis.

While the factor of experience was important, it is incorrect to state that it was decisive in this case. Other factors weighed in favor of Moline as compared to other applicants.

Broadcast experience aside, Moline was superior to Midland in local ownership and civic participation as well as diversification of business interests, as compared to Midland's preference in integration of ownership and management and a "slight" preference in diversification of media. (32 FCC 931.)

Similarly, experience aside, Moline was superior to Tele-Views in the fields of civic activities and integration of ownership and management since none of Tele-View's principals proposed to devote a substantial portion of his time to station operation. (32 FCC 928.) The only areas of preference which Tele-Views had over Moline was a slight preference in the area of local residence (Tele-Views represented 87 per cent local ownership as opposed to Moline's 75 per cent; 32 FCC 926), and a "very slight" preference in the diversification of ownership in mass media (Tele-Views had no connection with mass media while one of Moline's directors, a 1 per cent stockholder, controlled a minor weekly in the area. (See Conclusion 6, 32 FCC 925.)

Insofar as Illiway is concerned, the Commission found differences between it and Moline to exist in four areas. In each of these areas, Moline was found to be superior to Illiway:

a. In the field of diversification of media of mass communications. (Illiway's principals had a minority interest in widely scattered radio and television stations and a 3.6% stockholder of Illiway controlled 20 per cent of a local radio station.) (32 FCC 926.)

b. In the field of local residence. (Illiway was barely two-thirds controlled by local stockholders.) (32 FCC 926.)

c. In the field of integration of ownership. (Only 5.5 per cent of Illiway's ownership would be on a full-time basis as opposed to Moline's 10 per cent.) (32 FCC 928.)

d. In the field of broadcast experience. (Moline's Schreiber was found to have had more extensive broadcast experience than Illiway's Baisch.) (32 FCC 930.)

On the basis of the above considerations, the Commission concluded "... Moline made a better showing in each of the areas in which differences were found to be present." (32 FCC 931.)

Insofar as Community is concerned, the Commission found that those areas in which Community was found to be superior to Moline, the gradation of differences was slight. (32 FCC 931.) In local residence, the Commission concluded that all the applicants except Midland were "substantially equal," and that among these four, Community's preference over Moline was "... only very slight." (32 FCC 927.)

In the area of integration, Community was given a "degree of preference" and in the field of diversification of media, the preference was "slight" (32 FCC 925), and was attributed solely to Moline's 1 per cent stockholder's control of the local weekly.

In the field of broadcast experience, however, which we discussed on page 24, supra, the Commission found Community's Wodlinger inferior to all of the other applicants who proposed a named General Manager.

Thus, the Commission engaged in the very process of weighing the applicants which this Court approved in Pinellas, from which the Appellants quote in extenso.

If experience emerged as an important factor, it was because the nature of this case was one of small distinctions and nuances. While the Appellants obliquely express dissatisfaction with the Commission's ranking of the applicants in fields other than planning and experience, they nowhere challenge the reasonableness of the Commission's gradations in these areas.

Intervenor has recited the various considerations which the Commission itself articulated in order to demonstrate that this case is the classic example of a comparative proceeding which has impelled this Court to state:

"The foregoing is a sufficient description of the issues in the cases to show that they are in that area in which, under the doctrine of the recent decisions in Pinellas Broadcasting Co. v. Federal Communications Commission and McClatchy Broadcasting Co. v. Federal Communications Commission, the Commission has been given wide powers of judgment. The Congress conferred upon the Commission the task and the responsibility of evaluating comparative claims of mutually exclusive applicants. So long as it observes all procedural requirements, considers the issues, reaches reasoned conclusions, and renders reasoned judgment, courts cannot superimpose their opinions upon these matters." Tampa Times Company v. Federal Communications Commission, 97 U.S. App. D.C. 256, 258, 230 F.2d 224, 227 (1956).

III

THE COMMISSION'S DECISION ADEQUATELY STATES THE REASONS OR BASIS FOR ITS CONCLUSIONS

The Appellants' last contention is that the Commission violated Section 8 of the Administrative Procedure Act because it did not rewrite the Decision as a single document. Appellants complain that this fact imposes a "Herculean task" upon the reviewing tribunal.

A subsidiary argument is made that the Commission improperly ruled upon some exceptions and this, Appellants argue, illustrates the confused manner in which the Commission reached its Decision. It is submitted that the Appellants are in error on both counts.

Before, however, addressing itself to these contentions, Intervenor asserts that this question is improperly before this Court at this time.

A. The Question of the Form of the Commission's Decision was not Presented to the Commission as Required by Section 405 of the Communications Act, and, therefore, the Question is Improperly Before This Court.

Section 405 of the Communications Act of 1934, as amended (47 U.S.C. § 405), in its pertinent portion provides:

"The filing of a petition for rehearing shall not be a condition precedent to judicial review of any such order, decision, report, or action, except where the party seeking such review . . . (2) relies on questions of fact or law upon which the Commission, or designated authority within the Commission, has been afforded no opportunity to pass."

Appellants did not file a Petition for Reconsideration, but, in their brief, for the first time attack the form of the Commission's Decision. Intervenor urges that attack upon the form of a Decision falls within the ambit of ". . . questions of fact or law . . ." which a party is required to submit for administrative reconsideration prior to seeking judicial

review. Albertson v. Federal Communications Commission, 100 U.S. App. D.C. 103, 243 F.2d 209 (1957).

Since the question of the form of the Decision was not presented to the Commission for administrative reconsideration, this Court has no jurisdiction to decide it. Radio Station KFHH v. Federal Communications Commission, 101 U.S. App. D.C. 164, 247 F.2d 570 (1957), Footnote 1 at 247 F.2d 572.

B. The Commission's Decision is in Proper Form and Contains all the Elements Required Under the Administrative Procedure Act.

In spite of our contention that the problem of sufficiency of the form of the Commission's Decision is not properly before this Court, we will address ourselves to the contentions of the Appellants.

It is firmly established law that there is no particular form in which an administrative opinion must be molded. Saginaw Broadcasting Company v. Federal Communications Commission, 68 U.S. App. D.C. 282, 96 F.2d 554 (1938).

The Decision in question consists of 469 paragraphs of Findings of Fact taking up 125 closely printed pages. (32 FCC 939-1064.) They cover every area of the comparative process. In a three page Appendix, the Commission ruled on each exception submitted by all of the parties. (32 FCC 935-937.) It thus informed them of the disposition which it had made of their objections to the Initial Decision. National Labor Relations Board v. Wichita Television Corporation, 277 F.2d 579 (10th Cir. 1960), cert. denied 364 U.S. 871.

The Commission's Decision discussed each one of its comparative criteria and ranked the applicants within these criteria. (32 FCC 923-930.) Thereafter, the Commission summarized the respective rankings of the applicants as a basis for its judgment that Moline should be preferred. (32 FCC 931.)

Finally, the Commission proceeded to dispose of ancillary matters which are not in contention. (32 FCC 931-935.)

In discussing the standing of the applicants under each one of the comparative criteria, the Commission stated the position taken by the Examiner and its own position on the subject. In certain areas, the Commission agreed with the Examiner's conclusions. He found Tele-views to be financially qualified and the Commission agreed. (Conclusion 4, 32 FCC 924.) He found all applicants to be equal in the area of planning — again the Commission agreed. (Conclusion 5, 32 FCC 925.)

In other areas, the Examiner's conclusions were modified, but in every instance where the Commission reached a different judgment, both the Examiner's position and the Commission's position were stated in the Final Decision, together with the Commission's reasons for its position. Thus, there is no need for the frantic search which the Appellants label as "a do-it-yourself method."

Appellants, however, maintain that there is a Herculean task imposed upon the Court when it has to consider the facts as modified by the rulings upon exceptions and consider the conclusions on the basis of these facts.

An analysis of the Appendix (32 FCC 935-937) indicates that the Commission granted only 43 exceptions to the Initial Decision. Thus, the "Herculean task" is limited to that number of modifications.³²

C. The Allegations of Erroneous Rulings by the Commission are Erroneous in Themselves.

In an attempt to cast a shadow upon the Decision the Appellants have cited four examples which, they contend, indicate errors in the

³² In a recent case where this Court's decision indicates that the Commission followed the same procedure that was used in the instant case, there were 96 exceptions granted. The Price Broadcasters, Inc. v. Federal Communications Commission, 111 U.S. App. D.C. 179, 295 F.2d 166 (1961) affirming The Monocacy Broadcasting Company, 28 FCC 301, 19 RR 137 (1960).

Commission's rulings upon exceptions and, thus, undercut the "basis" for the Decision. We shall discuss these briefly:

(a) Tele-Views excepted to the failure of the Examiner to hold that "... it had gone to great lengths to assure itself of the feasibility of its plans," (R. 6595) and cited as an example the fact that some of its principals flew to Racine, Wisconsin to secure cooperation of the J. I. Case Company. The Commission, in ruling on Tele-Views' Exception 7, ruled that the significant factor is the plan of ascertaining community needs, not the effort involved in ascertaining them. (32 FCC 936.) Appellants contend that this ruling is contrary to the language of the Decision. Intervenor has searched the cited text (32 FCC 925) and finds no language excusing Moline's alleged lack of plan for ascertaining area needs which plan is discussed in Part I of this Brief. The fact that the Commission used the term "effort" in both instances is in no way misleading. Tele-Views sought a preference for its exertion in going to Racine. The Commission held that it would give no preference for exertion.

(b) Appellant Midland, in its Exception 4, recited the considerations which lead it to conclude that it should be preferred over the other applicants in the area of integration of ownership and management. This exception was based upon a 40 hour work week and utilized the principle of adding the total percentage of time to be devoted by stockholders and dividing it by the number of stockholders. The Commission did not utilize this basis of computation in awarding Midland a preference. It used instead the comparison of stock ownership represented by those who would devote a substantial portion of their time to the operation of the station. No new facts were presented by Midland's exception. Under those circumstances, the Commission properly denied the exception on the grounds "the factual findings sought are already in the record and the conclusions sought are not compelled from such findings." (32 FCC 937.)

(c) Illiway's Exception 29 and Community's Exception 130 consisted of a partial recital of the program record of Station WGN-TV of which Mr. Schreiber was General Manager. (R. 5549-5551, R. 8200-8201.) They recited the fact that Mr. Schreiber left WGN in 1956, had not attempted to return to broadcasting since that time, and that he had been an owner of a restaurant since May of 1957. The Commission denied these exceptions on the grounds that the Examiner's findings adequately reflected these matters and the additional modifications would be of cumulative effect rather than decisional significance. (32 FCC 936.) Basically, Appellants are questioning the Commission's administrative judgment as to the decisional significance of specific minutiae.

An administrative agency need not recite every fact of record. Minneapolis & St. Louis Railway Company v. United States, 361 U.S. 173 (1959). Insofar as the broadcast record of WGN-TV was concerned, the Commission had already ruled that no applicant in the instant proceeding had a broadcast record (32 FCC 925), and in this respect, the evidence concerning that station's operation was cumulative. Insofar as Mr. Schreiber's occupation is concerned, the Appellants themselves admit that the Examiner's Decision contained the findings that Mr. Schreiber had been out of broadcasting for several years and was a restaurant operator. (Appellants' Brief p. 45.) The requested findings were either cumulative or of no significance.

(d) Illiway Exceptions 3-6 (R. 8182-8183) pertained to:

(a) Failure to find that there were individuals at WOC-TV who held positions dealing with the programming of that station and that Mr. Wodlinger never held any of these positions.

(b) The failure to find the capacity in which Mr. Wodlinger placed WOC-TV on the air.

(c) The failure of the Examiner to indicate that Mr. Wodlinger's idea for a 5 minute newscast during the Dave Garroway Show was not a novel practice, and,

(d) The failure of the Examiner to indicate that Mr. Wodlinger's activity in the fields of station operation was nebulous and that his testimony was either vague or shows that he made no recommendation at all.

In no place did these cited exceptions urge that Wodlinger's experience was limited to sales as Appellants represent. (Appellants' Brief, p. 47.)

Insofar as Wodlinger is concerned, the Commission concluded that his "principal activity was sales." (Conclusion 13, 32 FCC 928.) This conclusion was based upon and fully supported by Findings 18 through 27. (32 FCC 944-946.) Any careful consideration of the record demonstrates that Appellants have alleged procedural errors wherever they disagreed with the Commission's judgment, but have failed to establish any error of decisional significance. Even if the trivia alleged by Appellants, collectively, were in fact supportable, they would in no way affect the soundness of the decision.

CONCLUSION

Intervenor respectfully submits that the Commission's Decision represents the proper exercise of its expert judgment in the administrative process. The conclusions flow logically from the Findings of Fact, which are supported by the record, and the Decision clearly reveals the reasons why, upon a comparative analysis, the Commission found Moline to be the best qualified applicant. The Decision must be affirmed.

Respectfully submitted,

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CONSOLIDATED REPLY BRIEF FOR APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION, Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,102

MIDLAND BROADCASTING CO., Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,108

ILLIWAY TELEVISION, INC., Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,110

TELE-VIEWS NEWS CO., INC., Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

On Consolidated Appeal From A Decision Of The
Federal Communications Commission

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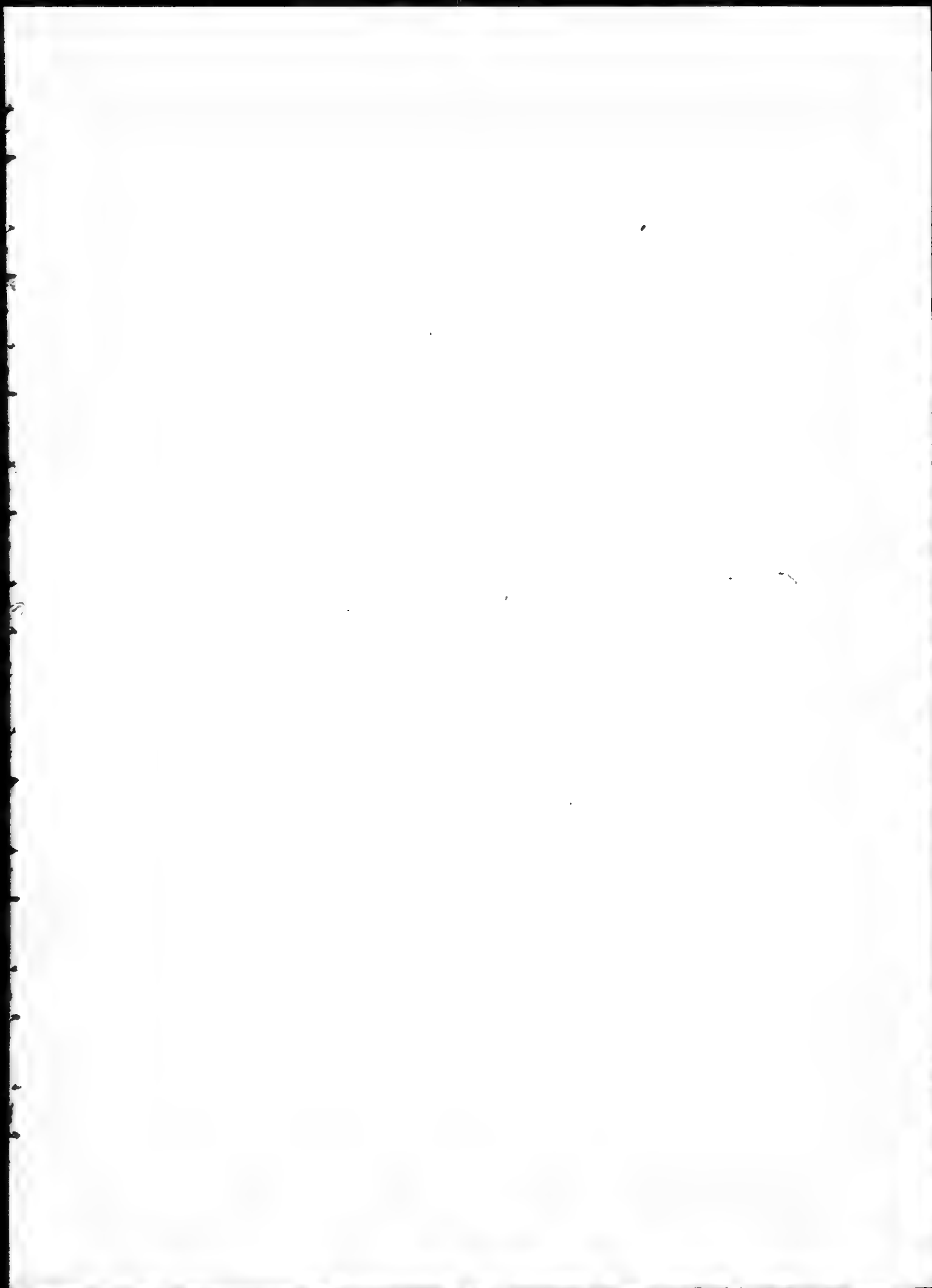
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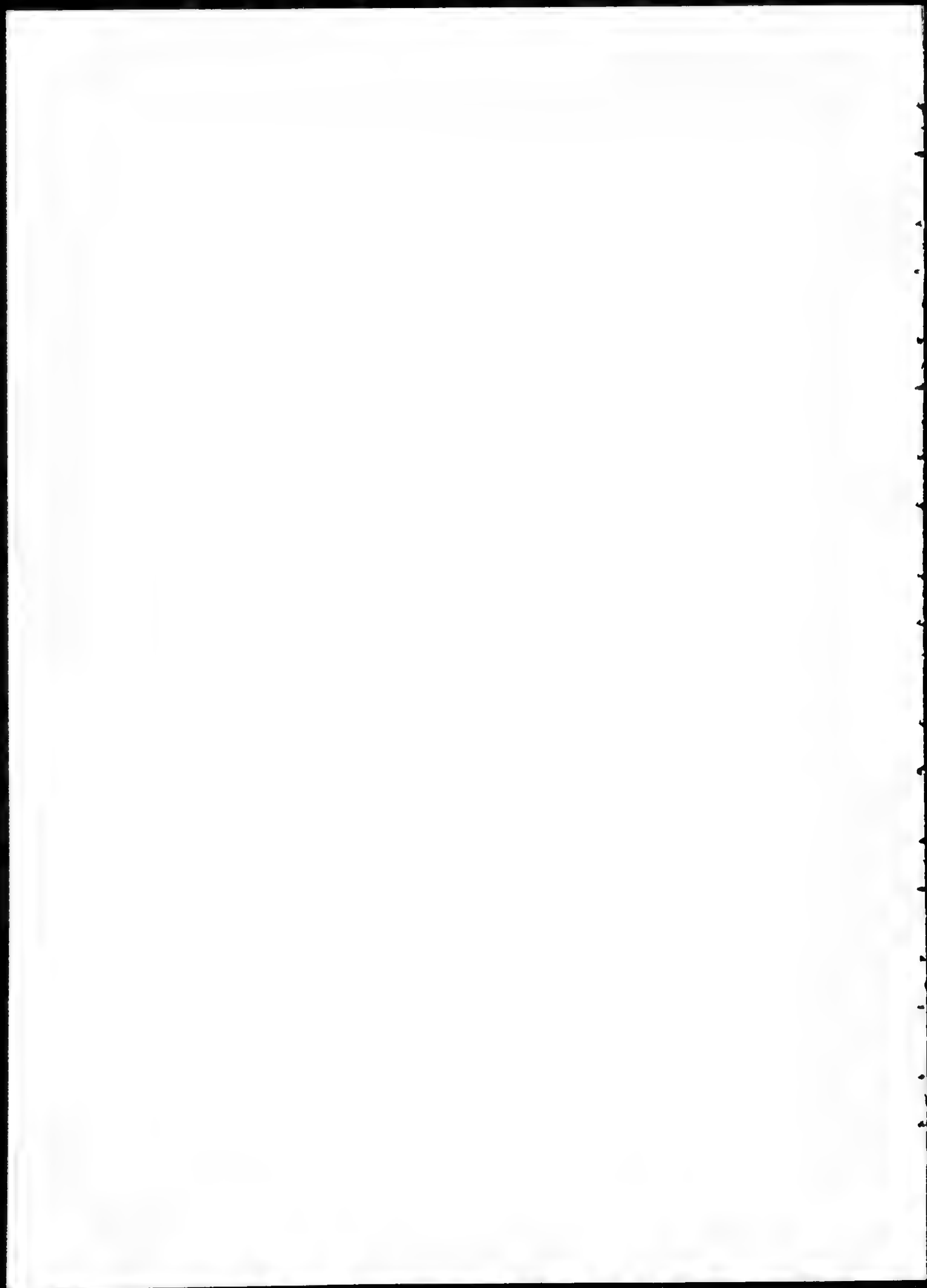
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,092

COMMUNITY TELECASTING CORPORATION,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

No. 17,102

MIDLAND BROADCASTING CO.,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

No. 17,108

ILLIWAY TELEVISION, INC.,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

No. 17,110

TELE-VIEWS NEWS CO., INC.,	Appellant,
v.	
FEDERAL COMMUNICATIONS COMMISSION,	Appellee,
MOLINE TELEVISION CORPORATION,	Intervenor.

On Consolidated Appeal from a Decision of the
Federal Communications Commission

CONSOLIDATED REPLY BRIEF FOR APPELLANTS

I. POLICY ON PROGRAMMING

In Point I of appellants' consolidated brief it is urged that the Commission committed reversible error by failing to apply its Policy on Programming, 20 R.R. 1901, in evaluating the efforts of the applicants in the instant proceeding. The briefs of the Commission and the intervenor serve to define further the issue presented in this connection. In essence, the dispute involves a determination of the meaning of that Policy on Programming.

In response to appellants' contention that the successful applicant, Moline, failed to make any serious affirmative effort to ascertain the tastes, needs and desires for programming of its proposed community and service area, and therefore should have received at least a serious comparative demerit as against the other applicants, each of whom did make such a serious affirmative effort, both the Commission and Moline urge that the Policy on Programming requires no such effort in the factual circumstances which are presented here. Each urges that the requirements of the Policy on Programming are fulfilled by a showing that an applicant is composed largely of local residents who are or have been active in the civic affairs of the principal community to be served (F.C.C. Br. 22-3; Moline Br. 13).¹

Appellants respectfully submit that the Policy on Programming, as set forth by the Commission, is not reasonably subject to any such interpretation, and further, that the Commission decisions cited in the briefs

¹ Although both the Commission (Br. 18-19) and intervenor (Br. 10-11) mention that Moline actually made a few sporadic "contacts," neither urges that these "contacts" constitute fulfillment of the Policy on Programming. Indeed, the Commission's Decision makes clear that these "contacts" were not made in order to ascertain the needs, tastes or desires of the area to be served, but rather to secure promises of cooperation from local groups for programming which was pre-determined on the basis of the personal views or predilections of the Moline stockholders (32 F.C.C. 1058).

of the Commission and Moline do not demonstrate that the Commission has so deviated from its Policy in any other case but this.²

An understanding of the Policy on Programming requires that it be considered as a whole. That it was intended by the Commission as an important and far-reaching statement cannot be gainsaid. It was issued on July 27, 1960 as part of a proceeding which commenced on November 21, 1955 and which was to encompass a comprehensive study of television programming (20 R.R. at 1902). The phase of the proceeding which resulted in the issuance of the Policy on Programming consumed 19 actual hearing days and heard over 90 witnesses. The Policy on Programming was issued by the Commission because it felt "that a general statement of policy responsive to the issues in the en banc inquiry [was] warranted * * *" (20 R.R. at 1903).

The first portion of the Policy on Programming (20 R.R. 1901-1913) consists of a comprehensive review of the activities of the Commission and its predecessor, the Federal Radio Commission, with respect to the programming of broadcast stations. This portion of the statement discusses the limitations on the Commission's regulatory activities in this area which result from the First Amendment to the Constitution, Section 326 of the Communications Act, and practical considerations which render the Commission incompetent to make subjective judgments concerning the content of specific programs or types of programs.

Clearly, the Commission felt that the prior implementation of its policies concerning programming had not been effective enough. It stressed that the statistical analyses of station programming which are required in application forms are inadequate to make a careful judgment concerning whether an applicant or licensee has served or would serve

² Clearly, the error present here would be no less even if the Commission had failed to apply its Policy in other cases. Appellants are not urging that the Commission was arbitrary in the instant case because it reached a decision inconsistent with other adjudicatory cases which it has decided; they urge that it committed error by failing to apply an unequivocally stated policy. If it has failed to apply that policy in other instances, those cases were also decided incorrectly.

the public interest (20 R.R. at 1914-1915). It stated (20 R.R. at 1915):

* * * the principal ingredient of the licensee's obligation to operate his station in the public interest is the diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his community or service area, for broadcast service.

Recognizing the limitations of its own power with respect to programming itself, and the inadequacy of the statistical analyses required in its application forms, the remainder of the Policy on Programming is devoted to explaining that the Commission was going to give much greater emphasis to the objective rather than the subjective aspects of this matter. The subjective considerations are those which relate to the content of programming. The objective factors are those which relate to the concrete efforts made by an applicant or licensee to ascertain and fulfill the needs, tastes and desires of his service area (20 R.R. at 1915-1916).

The Commission would, of course, continue to examine the overall programming proposals and performance of applicants and licensees. But this aspect of the Commission's review of applications for new stations and for renewal of licenses was no longer to be the sole or even the most important consideration. The Commission was henceforth equally or even more concerned with the precise objectively ascertainable methods which applicants would utilize to ascertain the needs, tastes and desires of the community and the steps taken to fulfill those needs.

The Policy on Programming itself makes clear that this changed emphasis was not dependent upon any change in the Commission's reporting requirements. To the extent that the Commission and intervenor now suggest that this might be the case (F.C.C. Br. 15; Moline Br. 12), they are patently incorrect. If any further proof, outside the confines of the Policy on Programming itself, were required, it is available in the Commission's own decision in Herbert Muschel, 23 R.R. 1059, at 1066. The language from that opinion which is quoted at pages 18 and 19 of appellants' original brief, states unequivocally that the existing desideratum

is that program submissions must be prepared as the result of assiduous planning and consultation covering both a canvass of the listening public and consultation with leaders in community life.³

The Policy on Programming unequivocally requires something beyond the composition of the applicant in order to satisfy the Commission's criteria for programming proposals that will serve the public interest. The factors of local residence and participation in civic activities have long been considered by the Commission in determining which is the best among competing applicants. Indeed, in the instant case itself these factors were given their full independent weight, without any reference to the program proposals of the applicant. It must be remembered that the Policy on Programming applies with equal vigor both to applications for renewal of license of existing standard broadcast stations and to applications for new stations. The standards there set forth which require existing stations seeking renewal of license to make a study of needs despite their local residence and knowledge of the community, a fortiori apply to applicants who do not have the benefit of the knowledge which can be acquired through operation of a station in the community.

Nor does any Commission decision cited in the briefs of the Commission or the intervenor hold that the standards can be met merely by local residence and civic activity. The Commission discusses only three cases in this connection (Br. 16-17). Two of those cases, The Toledo Blade Co. 25 F.C.C. 251, 15 R.R. 739, aff'd 110 U.S. App. D.C. 88, 289

³ That the Commission has substituted objective for subjective criteria in its effort to determine whether the public interest will be served is also indisputably demonstrated by the Muschel case. When the Commission remanded that case to its hearing examiner to receive further evidence on this general subject, it specified a single new issue (20 R.R. 902a, 902b):

To determine what efforts the applicants took to discover the tastes, needs and desires of their proposed communities or service areas for the type of broadcast service proposed.

Had the Commission been interested in making a subjective judgment of the extent to which the program proposals met the needs and tastes of the community, it certainly would not have phrased its issue in this manner. Clearly, it was concerned with receiving objective evidence upon which it could base a determination of the qualifications and attitude of each applicant.

F. 2d 754, and Veterans Broadcasting Co., Inc., 29 F.C.C. 83, 19 R.R. 339 were decided by the Commission before the Policy on Programming was adopted and do not discuss the Policy as such. Herbert Muschel, 23 R.R. 1059, which is fully discussed in the original brief of appellants, was decided after the Policy on Programming was adopted, and discusses it.⁴ The view of that case in the Commission's brief is patently erroneous. It asserts that the Commission there held the new standard was satisfied by "basic general community contacts," rather than by specific meetings with members of the community to discuss the proposed programs (F.C.C. Br. 17-18). It is true that the successful applicant didn't discuss specific programs in its "contacts," but it did ascertain needs for and tastes in programming, and not through "general community contacts," but in precisely the manner called for by the Policy on Programming. Actually, the successful applicant in that proceeding was the licensee of a standard broadcast station in the community to be served, and the Commission concluded (23 R.R. at 1064) that its contacts with the community "have been of long duration, far predating the genesis of the proposal before us." Through the activities of the standard broadcast station that applicant conducted extensive and continuing investigation into the needs and tastes of the audience to be served. The nature of these contacts was succinctly summarized in the Findings of Fact in the Initial Decision in that case, as follows (23 R.R. at 1085-1086):

Novik has also maintained contact over the years of his experience as a broadcaster with government officials, labor leaders, educational leaders and philanthropic and welfare organizations. The evidence shows that these contacts were frequent and were by personal visit, telephone and letter.
* * * Furthermore [the station] has resorted to the use of audience surveys.

* * *

* * * [T]here is no doubt that Novik discussed the needs of the Negro community with these individuals over a period

⁴ It is significant that the hearing in the Muschel case had been completed before the Policy on Programming was issued. Nevertheless, that Policy was directly applied in that case.

of several years and since no one disputes the fact that the individuals in question were well-equipped to know the needs and desires of the Negro community in New York the only material thing is that they gave Novik the benefit of their advice and thought on the subject of those needs. It is less material whether they were acquainted with the proposed program formats since the design of those formats was the primary responsibility of the broadcaster * * * .

In both the Toledo Blade and Veterans cases, the applicants who were held to have met the public interest standard although they did not make special surveys in connection with the proposals then before the Commission, each operated broadcast stations in the community involved, and through these stations maintained continuous contact with the community to ascertain its needs, desires and tastes.

It thus appears that in each case now relied on in the Commission's brief, the public interest standard was met only by continuous contacts with the community and its principal groups, through the medium of an operating broadcast station. In none of them did mere local residence and civic activities constitute fulfillment of the standard set forth in the Policy on Programming.

The attempts in the briefs of the Commission and the intervenor to justify logically the departure from the Commission's stated policy can be of no consequence in light of this court's determination in Sunbeam Television Corporation v. Federal Communications Commission, 100 U.S. App. D.C. 82, 243 F. 2d 26. When it issued the Policy on Programming, the Commission might possibly have been justified in adopting a different policy, but it did not. Its failure to apply its adopted policy in the instant case constitutes clear reversible error.

The attempt by the Commission and intervenor to justify Moline's activities as complying with the Commission's policy to the same extent as those of appellants must be rejected. Close analysis reveals that relatively few of Moline's stockholders were in fact "active" in the affairs of their communities (see 32 F.C.C. at 1067). Several of the other

applicants were also either wholly or largely composed of local residents who demonstrated greater participation in local civic affairs than did those of Moline (see 32 F.C.C. at 926-927; 32 F.C.C. at 942-958, 972-977, 996-998, 1001-1004, 1016-1018, 1023-1030). The significant fact is that the other applicants did not rest merely on the assumed knowledge of their local stockholders to ascertain the needs, tastes and desires of the service area. Each of them took the further significant step of conducting meaningful surveys among the civic, religious, educational, agricultural and other groups in the area to ascertain with specificity and in depth the needs and desires of those organizations. Only in this manner could appellants be certain that they had in fact determined the needs and desires of the entire area and that they were not relying on the personal idiosyncrasies of their stockholders.⁵ This is precisely the result intended by the Policy on Programming.

One dramatic example of the superiority of the method required by the Policy on Programming and followed by appellants over that adopted by Moline in the instant case concerns the needs of that very large portion of the service area which is located outside of the principal community to be served, i.e., the Quint-City metropolitan complex. Moline's station will serve a vast area outside the Quint Cities, encompassing approximately 11,000 square miles⁶ and including many sizeable communities and cities in addition to the Quint Cities. Intervenor made no effort

⁵ Intervenor's claim that it needed no survey because its own principals knew the needs of the area fell down under cross-examination. When questioned as to their knowledge of local matters, intervenor's principals demonstrated that they lacked knowledge of whether or not certain communities would be within their service area; they were unfamiliar with certain special events in the area; and could not identify by name the current leading educators, clergymen and civic leaders of the area, such as the Scott County (Davenport), Rock Island County (Rock Island and Moline) and Bettendorf Superintendents of Schools, the Police Chief of Davenport, the President of the Rock Island Ministerial Alliance, the County Director of Civil Defense, the Bishop of the Diocese of Davenport, the President of the Civic Music Association, the President of Rock Island's Community Chest and others (Tr. 2798-2803, 2897-2901, 2956-2959, 3267-3270).

⁶ See 32 F.C.C. at 1040, describing the area included within the Illiway predicted Grade B contour. Since the engineering proposals of all applicants were essentially identical, the Moline Grade B service area would be substantially the same as that of Illiway.

whatever to ascertain the needs of its vast outlying service area. In contrast, other applicants made program surveys which encompassed the entire area. Community, for example, made contacts in every county in its Grade B service area and in every community of significant size within each county (32 F.C.C. at 958; see R. 5195-5245, Appendix A to Proposed Findings and Conclusions of Community for a complete listing of all contacts by location and program subject matter by which each program contact can be traced into Community's program proposals). As the Examiner found (32 F.C.C. at 959), a "tracing of the contact interviews through the program descriptions establishes that the advance survey conducted by Community weighed heavily in forming the basis for Community's proposed local programs."⁷

The Commission's acceptance of intervenor's "built-in" Quint City knowledge concept in complete disregard for the needs of the balance of its vast service area, is contrary to its holding in Petersburg Television Corp., 10 R.R. 567, aff'd sub nom. Southside Virginia Telecasting Corp. v. Federal Communications Commission, 97 U.S. App. D.C. 130, 228 F. 2d 644, cert. den. 350 U.S. 1001 (1956). There an applicant, while generally professing to serve its entire area, made no program contacts in the northern half of its service area, proposing to emphasize service to the southern half. The Commission, denying that applicant and favoring its opponent, held that the proposal "and particularly the complete lack of

⁷ Both the Commission and intervenor argue that many of the survey contacts by Community were made after the date for filing its program proposals (F.C.C. Br. 22, fn. 12; Moline Br. 13-14). This argument ignores the evidence as to the nature of the survey. The record shows that Community made its major initial survey prior to preparing and filing its program schedule. After the schedule was filed, it made return calls to those previously contacted, showed them the schedule and detailed program descriptions and elicited their approval or further suggestions. A small number of initial personal contacts and a larger number of initial letter contacts were made after the filing simply to buttress and enlarge upon the many personal interview contacts previously made. (32 F.C.C. at 958-959). Further, intervenor scoffs at Community for writing a letter to its own officer-director Hoersch seeking the cooperation of the Scott County Bar Association (Moline Br. 14). But Community wanted formally to offer its station to the Bar Association and could not help it if its own stockholder happened to be the President of that community organization (see 32 F.C.C. at 948). If intervenor has among its own stockholders various civic leaders, as it claims, it did not even bother to solicit through them the official views of the organizations to which they belonged.

program contacts in . . . half of the service area" demonstrated that the applicant would ignore that half.

In the instant case, although intervenor has not affirmatively proposed to emphasize service to one part of its service area over another, its failure to make any effort to ascertain needs outside the Quint City metropolitan area, and its failure to demonstrate any knowledge by its principals of needs outside the metropolitan area, coupled with the demonstrated lack of familiarity of its principals of local matters both inside and outside the Quint Cities, lead ineluctably to the conclusion that the Commission erred in finding intervenor's "efforts" -- on a comparative basis -- to be equal with those of the other applicants.

That the substance and content of intervenor's programming suffered from its failure to make a survey is clear from a comparison of its program descriptions with those of the other applicants. Although both the Examiner and the Commission held that all applicants' program proposals were well balanced (32 F.C.C. at 925, 1071), this is a result which any applicant can easily achieve simply by adopting percentages of certain types of programs which have received Commission approval in a host of past cases. A survey is not necessary to reach this result -- only competent advice from counsel and from those with even limited non-resident experience in television programming. But to clothe such a bare bones proposal with the meaningful flesh of detailed local needs requires an assiduous survey to ascertain the particular facets of programming which will best serve those needs. That intervenor's programming proposals suffered from this lack is apparent from the Examiner's conclusion that "Moline's proposals are briefest because of reasons, no doubt, sketched in the paragraph, supra, on planning" [i.e., that Moline relied upon "subjective factors, i.e. the professed intimate knowledge of its officers, stockholders, and directors of the Moline area rather than objective data gleaned from contacts and observations specifically for the purpose" (32 F.C.C. at 1071)], which the Examiner concluded left "much to conjecture" and made "comparison more difficult" (32 F.C.C. at 1071).

A careful and thorough analysis of the record, considered in the light of the Commission's announced and strongly emphasized policy on the importance of an assiduous effort to ascertain and serve local needs, can lead to but one conclusion -- that the Commission was arbitrary in failing to accord intervenor a substantial demerit for its disregard of this essential element of its responsibility and the resultant adverse effect upon its program proposals.

II. EXPERIENCE

The Commission's brief constitutes an attempt by appellate counsel to rewrite and rationalize that portion of the Commission's Decision which deals with broadcast experience. The Commission decision on this point is unequivocal. It held that the actual record of performance of the various individuals who had such experience had no bearing on the comparison (32 F.C.C. at 925, 935, 936), and it refused to assess or consider the quality of Schreiber's performance or that of the other individuals with whom he had been compared on the factor of experience.

Appellate counsel for the Commission carefully does not deny appellants' claim that the Commission failed to assess the quality of Schreiber's experience. He does argue, however, (1) that Schreiber's experience was in fact not poor (Br. 32-33) and (2) that the Commission could properly disregard the quality of his performance at the very moment it was making his experience decisive (Br. 33-34, footnote 15).

The Commission, in its Decision, on the other hand, did not express any opinion on the quality of Schreiber's past performance, since it held that the assessment of his performance was not relevant to the question before it. The statement (F.C.C. Br. 33) that "No shortcomings in the operation of WGN-TV which would denigrate Schreiber's experience were shown" is the evaluation of appellate counsel, but not of the Commission, which refused to express any opinion on this matter, and refused to make the evaluation counsel now seeks to supply. The validity of the Decision

must, however, rest upon the Commission's judgment expressed in the Decision itself. The decision of the Supreme Court in Burlington Truck Lines v. United States, 83 S. Ct. 239 (1962), is especially pertinent (83 S. Ct. at 246):

The short answer to this attempted justification is that the Commission did not so find. Securities & Exchange Commission v. Chenery Corp., 332 U.S. 194, 196, 67 S. Ct. 1575, 1577, 91 L. Ed. 1995. The courts may not accept appellate counsel's post hoc rationalizations for agency action; Chenery requires that an agency's discretionary order be upheld, if at all, on the same basis articulated in the order by the agency itself:

"[A] simple but fundamental rule of administrative law * * * is * * * that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action * * *." Ibid.

For the courts to substitute their or counsel's discretion for that of the Commission is incompatible with the orderly functioning of the process of judicial review. This is not to deprecate, but to vindicate (see Phelps Dodge Corp. v. Labor Board, 313 U.S. 177, 197, 61 S. Ct. 845, 853, 854, 85 L. Ed. 1271), the administrative process, for the purpose of the rule is to avoid "propel(ling) the court into the domain which Congress has set aside exclusively for the administrative agency." 332 U.S., at 196, 67 S. Ct., at 1577, 91 L. Ed. 1995.

Even if the appellate counsel could properly supply an evaluation for the first time, his evaluation in this case is arbitrary, since it does not consider the record or quality of performance of the other individuals whose experience was compared by the Commission with Schreiber's.⁸

⁸ A detailed reply to counsel's evaluation is not necessary in view of its impropriety. It is appropriate, however, to note that he has improperly evaluated the failure of Schreiber to keep his program promises. The fact that Schreiber may have met the low watermark of the public interest and thereby induced the Commission to grant his station renewals, does not provide any answer to the question: How good was his performance? In every case in which past performance has been considered and deprecated by the Commission, the licensee, like Schreiber, had received a renewal of license.

Even if Schreiber's past performance was not "substandard", the performance of the others with whom Schreiber was compared was very much above standard. The Examiner made express findings on the very favorable performance of Wodlinger, the Altasses, and Baisch and Mazzie (32 F.C.C. at 944-46, 994, 998-1001, 1030-33). Not only did the Commission fail to assess the performance of these individuals, but the appellate counsel has failed to as well.

Counsel apparently could not rationalize away the Commission's refusal to consider the superior performance of these individuals, and his silence can only be viewed as a demonstration of the unfairness and invalidity of the procedure followed by the Commission.

Mr. Schreiber was an officer, director and general manager of the station involved. He was completely responsible for its operation, and there was no evidence submitted that he shared the executive responsibility for the station with anyone else (32 F.C.C. at 1043). To assert as does the Commission's brief, that he was not legally responsible for the activities of the station is only to provide a device for the Commission to blind its eyes to pertinent facts. At any event, even if the Commission may refuse to give independent weight to quality of performance of persons in Schreiber's position because they do not have stock ownership interest, certainly when the Commission considers the broadcast experience of such a person, it is then required to consider the demerits which attach to the operation which provided this very broadcast experience.

Counsel's defense of the Commission's action is inadequate for another reason. He concedes that the past performance of a stockholder would have to be considered, either as an independent matter or as reflecting on experience. It is on this basis that he distinguishes Toledo Blade, 25 F.C.C. 251 (Br. 34, footnote 15). But this distinction does not explain the failure of the Commission to consider the quality of performance of Leslie Atlass and Joseph Baisch, both of whom were stockholders in the respective stations whose operation gave rise to their respective experience (32 F.C.C. at 994, 1020, 1030-33). No rational explanation

can be presented to sustain the Commission's refusal to consider the quality of their performance. Since the instant case was decided, the Commission has expressly recognized that defects in the quality of performance of a minority stockholder must be considered even when he is inactive in the affairs of the station. Jefferson Standard Broadcasting Co., 33 F.C.C. 471, 485, 514. The ostensible reason for refusing to consider the quality of their experience in the instant case -- that they were only minority stockholders (32 F.C.C. at 925) -- must be rejected as irrational and contrary to the policy described by appellate counsel and followed by the Commission in other cases.

Even assuming that the quality of performance of Schreiber and the other individuals could be disregarded by the Commission, we think it is clear that on the basis of the record it was improper for the Commission to have preferred Schreiber on the basis of experience alone. The Commission and intervenor have not demonstrated the reasonableness of the Commission's judgment that Schreiber's experience was superior to the others. Indeed, even intervenor did not urge before the Commission that it should be accorded a preference over all the other applicants on the factor of broadcast experience. See R. 8900-8901. It conceded that Midland was to be preferred to itself, and even its claim of preference over the other applicants was based not on Schreiber's experience, but on the fact that Moline had two members of its Board of Directors with broadcast experience. This claimed preference was accorded no weight by the Commission.

The failure of the Commission properly to assess the record bearing on experience is all the more important because of the decisive weight which the Commission gave to broadcast experience in this case. In our brief, we claimed that this was a case of first impression. We stated that "broadcast experience of principals has never before been held to be a decisive criterion. A search of past precedents reveals no other case in which it was the sole basis for the award of a station." (Appellants' Br. 26.) Because the Commission had never before given bare broadcast

experience such decisive weight,⁹ appellants contended that the Commission was required to spell out the reasons for its judgment that such bare broadcast experience could be the sole basis for the award of a channel.

The appellate counsel takes the position that "since the use of broadcast experience as a comparative factor is of long standing, no additional explanation by the Commission of its use here was necessary." (F.C.C. Br. 27-28). This position, however, is predicated on the assumption that the Commission has previously afforded bare broadcast experience the weight attributed to it in this case and the Commission therefore did not have the obligation to make clear the basis for its decision, since the basis for its judgment had previously been set forth. The crux of the controversy therefore relates to appellants' claim that this is a case of first impression and that the Commission has never before arrived at the result it has reached in this case.

The Commission's counsel is able to refer to only one case where he can claim that broadcast experience was the determinative factor. He has in a footnote (footnote 13, p. 28) cited Television Broadcasters, 27 F.C.C. 727, asserting that in that case "experience was the determinative factor." A reading of Television Broadcasters demonstrates that the General Counsel is in error. In that case it was not bare broadcast experience which was the determinative factor, but rather broadcast experience tied to local residence and the operation of a station in the same local

⁹ The Commission's brief (pp. 23-24) argues that the Commission did not, as appellants urge, favor intervenor only because the showing in other areas was considered unimportant as compared with the showing in broadcast experience, but, rather, because intervenor "had made a better overall showing than any of the other applicants" (32 F.C.C. at 931). This statement is, however, inconsistent with counsel's own statement on page 26 of its brief that "although Community made a somewhat better showing than Moline in the area of integration of ownership and management, local residence, and diversification of control of the media of mass communications, Moline demonstrated substantial superiority in the area of broadcast experience, in which Community was ranked fourth"! It is patently obvious that the mere difference between the experience of Community's Wodlinger (with ten years of experience at a local Quint City TV station) and that of intervenor's Schreiber (with ten years of experience at a Chicago station, but none since 1956) was held to outweigh the superiority of Community over intervenor in three of the Commission's most important and time-honored criteria -- local residence, integration, and diversification of the ownership of mass media. A comparable analysis can be made as between intervenor and the other applicants. In each case Schreiber's bare experience was held to outweigh everything else.

community. Unlike its decision in this case, the Commission in Television Broadcasters was careful to spell out that it was not bare broadcast experience that was given heavy weight; it made clear that the broadcast experience had been obtained in the operation of a station in the same community in which the new station was to be located, and that because of this coalescence of knowledge of local needs and broadcast experience, the qualifications of the applicant became highly significant.¹⁰ The Commission was required in this case to follow the same procedure, and to make clear the reasons for its conclusion that bare experience could be the determinative factor. The General Counsel's attempt to do for the Commission what the Commission would not do for itself cannot be received as an acceptable substitute for the Commission's own statement of its reasons for its decision. Burlington Truck Lines v. United States, 83 S. Ct. 239 (1962). The Commission's use of "experience" as a semantic device upon which to decide the instant case reduces the administrative process to "word jugglery" -- a procedure which is patently improper. See Felix Frankfurter, Mr. Justice Jackson, 68 Harv. L. Rev. 937, 938 (1955).

III. FORM OF DECISION

The Commission and intervenor contend that the question of the "form" of the Commission's decision was not presented to the Commission as required by Section 405 of the Communications Act and, therefore, is not properly before the Court.

Appellants would agree that if mere "form" alone were the issue, its opponents' point might be well taken. As recognized in appellants' original Brief (p. 48), the Commission has wide discretion as to the "form" of its decisions, so long as their substance is made clear. It is the underlying reason and basis for the decision which has been lost in the obscurity

¹⁰ As a matter of fact, since Community's Wodlinger had gained his long experience in the operation of WOC-TV in the Quint-Cities itself, Television Broadcasters would require the Commission to conclude that Wodlinger's experience was more valuable than that of Schreiber which was obtained in Chicago.

of the instant opinion. As in Saginaw Broadcasting v. Federal Communications Commission, 68 U.S. App. D.C. 282, 291-92, 96 F. 2d 554, 563-64, cert. den. 305 U.S. 613, the decision here is not "based upon that careful consideration of the evidence which is properly to be expected from an unbiased body of experts discharging a function so important from the standpoint of both the parties and the public." As a result, a rational basis for the decision not only fails to shine through, but is lost in a veil of denounced policies and precedents, leaving the present and future litigants before the Commission in a state of bewilderment and uncertainty as to what is the law.

The Commission has reached a result here that is inexplicable in the light of its prior decisions and has laid a smokescreen over its thought processes in a manner which defies review. To use Judge Bazelon's words in his brief dissent in Beachview Broadcasting Corp. v. Federal Communications Commission, 104 U.S. App. D.C. 377, 262 F. 2d 688, rehearing den. 106 U.S. App. D.C. 341, 273 F.2d 76, cert. den. 359 U.S. 936, the Commission has here employed "shifting emphasis of comparative criteria obliterating any predictable pattern of decision." If decisions such as this go unchallenged and unchanged, respect for the decision making process of the administrative agency cannot long endure.

Respectfully submitted,

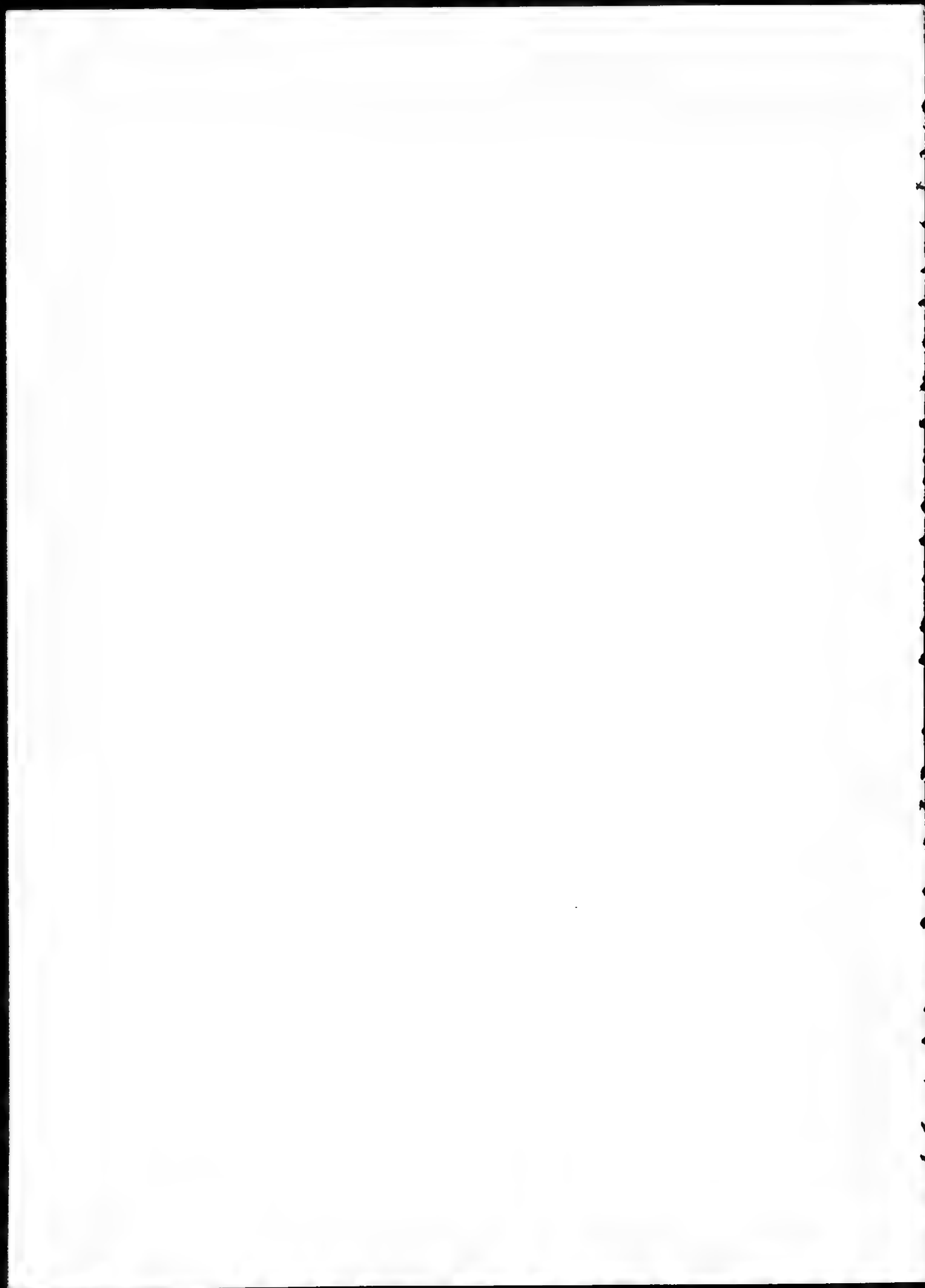
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CONSOLIDATED REPLY BRIEF FOR APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

241

No. 17,092

COMMUNITY TELECASTING CORPORATION, Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,102

MIDLAND BROADCASTING CO., Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,108

ILLIWAY TELEVISION, INC., Appellant,

v.

FEDERAL COMMUNICATIONS COMMISSION, Appellee,
MOLINE TELEVISION CORPORATION, Intervenor.

No. 17,110

TELE-VIEWS NEWS CO., INC., Appellant,

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FEDERAL COMMUNICATIONS COMMISSION, Appellee,
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CONSOLIDATED REPLY BRIEF FOR APPELLANTS

I. POLICY ON PROGRAMMING

In Point I of appellants' consolidated brief it is urged that the Commission committed reversible error by failing to apply its Policy on Programming, 20 R.R. 1901, in evaluating the efforts of the applicants in the instant proceeding. The briefs of the Commission and the intervenor serve to define further the issue presented in this connection. In essence, the dispute involves a determination of the meaning of that Policy on Programming.

In response to appellants' contention that the successful applicant, Moline, failed to make any serious affirmative effort to ascertain the tastes, needs and desires for programming of its proposed community and service area, and therefore should have received at least a serious comparative demerit as against the other applicants, each of whom did make such a serious affirmative effort, both the Commission and Moline urge that the Policy on Programming requires no such effort in the factual circumstances which are presented here. Each urges that the requirements of the Policy on Programming are fulfilled by a showing that an applicant is composed largely of local residents who are or have been active in the civic affairs of the principal community to be served (F.C.C. Br. 22-3; Moline Br. 13).¹

Appellants respectfully submit that the Policy on Programming, as set forth by the Commission, is not reasonably subject to any such interpretation, and further, that the Commission decisions cited in the briefs

¹ Although both the Commission (Br. 18-19) and intervenor (Br. 10-11) mention that Moline actually made a few sporadic "contacts," neither urges that these "contacts" constitute fulfillment of the Policy on Programming. Indeed, the Commission's Decision makes clear that these "contacts" were not made in order to ascertain the needs, tastes or desires of the area to be served, but rather to secure promises of cooperation from local groups for programming which was pre-determined on the basis of the personal views or predilections of the Moline stockholders (32 F.C.C. 1058).

of the Commission and Moline do not demonstrate that the Commission has so deviated from its Policy in any other case but this.²

An understanding of the Policy on Programming requires that it be considered as a whole. That it was intended by the Commission as an important and far-reaching statement cannot be gainsaid. It was issued on July 27, 1960 as part of a proceeding which commenced on November 21, 1955 and which was to encompass a comprehensive study of television programming (20 R.R. at 1902). The phase of the proceeding which resulted in the issuance of the Policy on Programming consumed 19 actual hearing days and heard over 90 witnesses. The Policy on Programming was issued by the Commission because it felt "that a general statement of policy responsive to the issues in the en banc inquiry [was] warranted * * *" (20 R.R. at 1903).

The first portion of the Policy on Programming (20 R.R. 1901-1913) consists of a comprehensive review of the activities of the Commission and its predecessor, the Federal Radio Commission, with respect to the programming of broadcast stations. This portion of the statement discusses the limitations on the Commission's regulatory activities in this area which result from the First Amendment to the Constitution, Section 326 of the Communications Act, and practical considerations which render the Commission incompetent to make subjective judgments concerning the content of specific programs or types of programs.

Clearly, the Commission felt that the prior implementation of its policies concerning programming had not been effective enough. It stressed that the statistical analyses of station programming which are required in application forms are inadequate to make a careful judgment concerning whether an applicant or licensee has served or would serve

² Clearly, the error present here would be no less even if the Commission had failed to apply its Policy in other cases. Appellants are not urging that the Commission was arbitrary in the instant case because it reached a decision inconsistent with other adjudicatory cases which it has decided; they urge that it committed error by failing to apply an unequivocally stated policy. If it has failed to apply that policy in other instances, those cases were also decided incorrectly.

the public interest (20 R.R. at 1914-1915). It stated (20 R.R. at 1915):

* * * the principal ingredient of the licensee's obligation to operate his station in the public interest is the diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his community or service area, for broadcast service.

Recognizing the limitations of its own power with respect to programming itself, and the inadequacy of the statistical analyses required in its application forms, the remainder of the Policy on Programming is devoted to explaining that the Commission was going to give much greater emphasis to the objective rather than the subjective aspects of this matter. The subjective considerations are those which relate to the content of programming. The objective factors are those which relate to the concrete efforts made by an applicant or licensee to ascertain and fulfill the needs, tastes and desires of his service area (20 R.R. at 1915-1916).

The Commission would, of course, continue to examine the overall programming proposals and performance of applicants and licensees. But this aspect of the Commission's review of applications for new stations and for renewal of licenses was no longer to be the sole or even the most important consideration. The Commission was henceforth equally or even more concerned with the precise objectively ascertainable methods which applicants would utilize to ascertain the needs, tastes and desires of the community and the steps taken to fulfill those needs.

The Policy on Programming itself makes clear that this changed emphasis was not dependent upon any change in the Commission's reporting requirements. To the extent that the Commission and intervenor now suggest that this might be the case (F.C.C. Br. 15; Moline Br. 12), they are patently incorrect. If any further proof, outside the confines of the Policy on Programming itself, were required, it is available in the Commission's own decision in Herbert Muschel, 23 R.R. 1059, at 1066. The language from that opinion which is quoted at pages 18 and 19 of appellants' original brief, states unequivocally that the existing desideratum

is that program submissions must be prepared as the result of assiduous planning and consultation covering both a canvass of the listening public and consultation with leaders in community life.³

The Policy on Programming unequivocally requires something beyond the composition of the applicant in order to satisfy the Commission's criteria for programming proposals that will serve the public interest. The factors of local residence and participation in civic activities have long been considered by the Commission in determining which is the best among competing applicants. Indeed, in the instant case itself these factors were given their full independent weight, without any reference to the program proposals of the applicant. It must be remembered that the Policy on Programming applies with equal vigor both to applications for renewal of license of existing standard broadcast stations and to applications for new stations. The standards there set forth which require existing stations seeking renewal of license to make a study of needs despite their local residence and knowledge of the community, a fortiori apply to applicants who do not have the benefit of the knowledge which can be acquired through operation of a station in the community.

Nor does any Commission decision cited in the briefs of the Commission or the intervenor hold that the standards can be met merely by local residence and civic activity. The Commission discusses only three cases in this connection (Br. 16-17). Two of those cases, The Toledo Blade Co. 25 F.C.C. 251, 15 R.R. 739, aff'd 110 U.S. App. D.C. 88, 289

³ That the Commission has substituted objective for subjective criteria in its effort to determine whether the public interest will be served is also indisputably demonstrated by the Muschel case. When the Commission remanded that case to its hearing examiner to receive further evidence on this general subject, it specified a single new issue (20 R.R. 902a, 902b):

To determine what efforts the applicants took to discover the tastes, needs and desires of their proposed communities or service areas for the type of broadcast service proposed.

Had the Commission been interested in making a subjective judgment of the extent to which the program proposals met the needs and tastes of the community, it certainly would not have phrased its issue in this manner. Clearly, it was concerned with receiving objective evidence upon which it could base a determination of the qualifications and attitude of each applicant.

F. 2d 754, and Veterans Broadcasting Co., Inc., 29 F.C.C. 83, 19 R.R. 339 were decided by the Commission before the Policy on Programming was adopted and do not discuss the Policy as such. Herbert Muschel, 23 R.R. 1059, which is fully discussed in the original brief of appellants, was decided after the Policy on Programming was adopted, and discusses it.⁴ The view of that case in the Commission's brief is patently erroneous. It asserts that the Commission there held the new standard was satisfied by "basic general community contacts," rather than by specific meetings with members of the community to discuss the proposed programs (F.C.C. Br. 17-18). It is true that the successful applicant didn't discuss specific programs in its "contacts," but it did ascertain needs for and tastes in programming, and not through "general community contacts," but in precisely the manner called for by the Policy on Programming. Actually, the successful applicant in that proceeding was the licensee of a standard broadcast station in the community to be served, and the Commission concluded (23 R.R. at 1064) that its contacts with the community "have been of long duration, far predating the genesis of the proposal before us." Through the activities of the standard broadcast station that applicant conducted extensive and continuing investigation into the needs and tastes of the audience to be served. The nature of these contacts was succinctly summarized in the Findings of Fact in the Initial Decision in that case, as follows (23 R.R. at 1085-1086):

Novik has also maintained contact over the years of his experience as a broadcaster with government officials, labor leaders, educational leaders and philanthropic and welfare organizations. The evidence shows that these contacts were frequent and were by personal visit, telephone and letter.
* * * Furthermore [the station] has resorted to the use of audience surveys.

* * *

* * * [T]here is no doubt that Novik discussed the needs of the Negro community with these individuals over a period

⁴ It is significant that the hearing in the Muschel case had been completed before the Policy on Programming was issued. Nevertheless, that Policy was directly applied in that case.

of several years and since no one disputes the fact that the individuals in question were well-equipped to know the needs and desires of the Negro community in New York the only material thing is that they gave Novik the benefit of their advice and thought on the subject of those needs. It is less material whether they were acquainted with the proposed program formats since the design of those formats was the primary responsibility of the broadcaster * * * .

In both the Toledo Blade and Veterans cases, the applicants who were held to have met the public interest standard although they did not make special surveys in connection with the proposals then before the Commission, each operated broadcast stations in the community involved, and through these stations maintained continuous contact with the community to ascertain its needs, desires and tastes.

It thus appears that in each case now relied on in the Commission's brief, the public interest standard was met only by continuous contacts with the community and its principal groups, through the medium of an operating broadcast station. In none of them did mere local residence and civic activities constitute fulfillment of the standard set forth in the Policy on Programming.

The attempts in the briefs of the Commission and the intervenor to justify logically the departure from the Commission's stated policy can be of no consequence in light of this court's determination in Sunbeam Television Corporation v. Federal Communications Commission, 100 U.S. App. D.C. 82, 243 F. 2d 26. When it issued the Policy on Programming, the Commission might possibly have been justified in adopting a different policy, but it did not.' Its failure to apply its adopted policy in the instant case constitutes clear reversible error.

The attempt by the Commission and intervenor to justify Moline's activities as complying with the Commission's policy to the same extent as those of appellants must be rejected. Close analysis reveals that relatively few of Moline's stockholders were in fact "active" in the affairs of their communities (see 32 F.C.C. at 1067). Several of the other

applicants were also either wholly or largely composed of local residents who demonstrated greater participation in local civic affairs than did those of Moline (see 32 F.C.C. at 926-927; 32 F.C.C. at 942-958, 972-977, 996-998, 1001-1004, 1016-1018, 1023-1030). The significant fact is that the other applicants did not rest merely on the assumed knowledge of their local stockholders to ascertain the needs, tastes and desires of the service area. Each of them took the further significant step of conducting meaningful surveys among the civic, religious, educational, agricultural and other groups in the area to ascertain with specificity and in depth the needs and desires of those organizations. Only in this manner could appellants be certain that they had in fact determined the needs and desires of the entire area and that they were not relying on the personal idiosyncrasies of their stockholders.⁵ This is precisely the result intended by the Policy on Programming.

One dramatic example of the superiority of the method required by the Policy on Programming and followed by appellants over that adopted by Moline in the instant case concerns the needs of that very large portion of the service area which is located outside of the principal community to be served, *i.e.*, the Quint-City metropolitan complex. Moline's station will serve a vast area outside the Quint Cities, encompassing approximately 11,000 square miles⁶ and including many sizeable communities and cities in addition to the Quint Cities. Intervenor made no effort

⁵ Intervenor's claim that it needed no survey because its own principals knew the needs of the area fell down under cross-examination. When questioned as to their knowledge of local matters, intervenor's principals demonstrated that they lacked knowledge of whether or not certain communities would be within their service area; they were unfamiliar with certain special events in the area; and could not identify by name the current leading educators, clergymen and civic leaders of the area, such as the Scott County (Davenport), Rock Island County (Rock Island and Moline) and Bettendorf Superintendents of Schools, the Police Chief of Davenport, the President of the Rock Island Ministerial Alliance, the County Director of Civil Defense, the Bishop of the Diocese of Davenport, the President of the Civic Music Association, the President of Rock Island's Community Chest and others (Tr. 2798-2803, 2897-2901, 2956-2959, 3267-3270).

⁶ See 32 F.C.C. at 1040, describing the area included within the Illiway predicted Grade B contour. Since the engineering proposals of all applicants were essentially identical, the Moline Grade B service area would be substantially the same as that of Illiway.

whatever to ascertain the needs of its vast outlying service area. In contrast, other applicants made program surveys which encompassed the entire area. Community, for example, made contacts in every county in its Grade B service area and in every community of significant size within each county (32 F.C.C. at 958; see R. 5195-5245, Appendix A to Proposed Findings and Conclusions of Community for a complete listing of all contacts by location and program subject matter by which each program contact can be traced into Community's program proposals). As the Examiner found (32 F.C.C. at 959), a "tracing of the contact interviews through the program descriptions establishes that the advance survey conducted by Community weighed heavily in forming the basis for Community's proposed local programs."⁷

The Commission's acceptance of intervenor's "built-in" Quint City knowledge concept in complete disregard for the needs of the balance of its vast service area, is contrary to its holding in Petersburg Television Corp., 10 R.R. 567, aff'd sub nom. Southside Virginia Telecasting Corp. v. Federal Communications Commission, 97 U.S. App. D.C. 130, 228 F. 2d 644, cert. den. 350 U.S. 1001 (1956). There an applicant, while generally professing to serve its entire area, made no program contacts in the northern half of its service area, proposing to emphasize service to the southern half. The Commission, denying that applicant and favoring its opponent, held that the proposal "and particularly the complete lack of

⁷ Both the Commission and intervenor argue that many of the survey contacts by Community were made after the date for filing its program proposals (F.C.C. Br. 22, fn. 12; Moline Br. 13-14). This argument ignores the evidence as to the nature of the survey. The record shows that Community made its major initial survey prior to preparing and filing its program schedule. After the schedule was filed, it made return calls to those previously contacted, showed them the schedule and detailed program descriptions and elicited their approval or further suggestions. A small number of initial personal contacts and a larger number of initial letter contacts were made after the filing simply to buttress and enlarge upon the many personal interview contacts previously made. (32 F.C.C. at 958-959). Further, intervenor scoffs at Community for writing a letter to its own officer-director Hoersch seeking the cooperation of the Scott County Bar Association (Moline Br. 14). But Community wanted formally to offer its station to the Bar Association and could not help it if its own stockholder happened to be the President of that community organization (see 32 F.C.C. at 948). If intervenor has among its own stockholders various civic leaders, as it claims, it did not even bother to solicit through them the official views of the organizations to which they belonged.

program contacts in . . . half of the service area" demonstrated that the applicant would ignore that half.

In the instant case, although intervenor has not affirmatively proposed to emphasize service to one part of its service area over another, its failure to make any effort to ascertain needs outside the Quint City metropolitan area, and its failure to demonstrate any knowledge by its principals of needs outside the metropolitan area, coupled with the demonstrated lack of familiarity of its principals of local matters both inside and outside the Quint Cities, lead ineluctably to the conclusion that the Commission erred in finding intervenor's "efforts" -- on a comparative basis -- to be equal with those of the other applicants.

That the substance and content of intervenor's programming suffered from its failure to make a survey is clear from a comparison of its program descriptions with those of the other applicants. Although both the Examiner and the Commission held that all applicants' program proposals were well balanced (32 F.C.C. at 925, 1071), this is a result which any applicant can easily achieve simply by adopting percentages of certain types of programs which have received Commission approval in a host of past cases. A survey is not necessary to reach this result -- only competent advice from counsel and from those with even limited non-resident experience in television programming. But to clothe such a bare bones proposal with the meaningful flesh of detailed local needs requires an assiduous survey to ascertain the particular facets of programming which will best serve those needs. That intervenor's programming proposals suffered from this lack is apparent from the Examiner's conclusion that "Moline's proposals are briefest because of reasons, no doubt, sketched in the paragraph, supra, on planning" [i.e., that Moline relied upon "subjective factors, i.e. the professed intimate knowledge of its officers, stockholders, and directors of the Moline area rather than objective data gleaned from contacts and observations specifically for the purpose" (32 F.C.C. at 1071)], which the Examiner concluded left "much to conjecture" and made "comparison more difficult" (32 F.C.C. at 1071).

A careful and thorough analysis of the record, considered in the light of the Commission's announced and strongly emphasized policy on the importance of an assiduous effort to ascertain and serve local needs, can lead to but one conclusion -- that the Commission was arbitrary in failing to accord intervenor a substantial demerit for its disregard of this essential element of its responsibility and the resultant adverse effect upon its program proposals.

II. EXPERIENCE

The Commission's brief constitutes an attempt by appellate counsel to rewrite and rationalize that portion of the Commission's Decision which deals with broadcast experience. The Commission decision on this point is unequivocal. It held that the actual record of performance of the various individuals who had such experience had no bearing on the comparison (32 F.C.C. at 925, 935, 936), and it refused to assess or consider the quality of Schreiber's performance or that of the other individuals with whom he had been compared on the factor of experience.

Appellate counsel for the Commission carefully does not deny appellants' claim that the Commission failed to assess the quality of Schreiber's experience. He does argue, however, (1) that Schreiber's experience was in fact not poor (Br. 32-33) and (2) that the Commission could properly disregard the quality of his performance at the very moment it was making his experience decisive (Br. 33-34, footnote 15).

The Commission, in its Decision, on the other hand, did not express any opinion on the quality of Schreiber's past performance, since it held that the assessment of his performance was not relevant to the question before it. The statement (F.C.C. Br. 33) that "No shortcomings in the operation of WGN-TV which would denigrate Schreiber's experience were shown" is the evaluation of appellate counsel, but not of the Commission, which refused to express any opinion on this matter, and refused to make the evaluation counsel now seeks to supply. The validity of the Decision

must, however, rest upon the Commission's judgment expressed in the Decision itself. The decision of the Supreme Court in Burlington Truck Lines v. United States, 83 S. Ct. 239 (1962), is especially pertinent (83 S. Ct. at 246):

The short answer to this attempted justification is that the Commission did not so find. Securities & Exchange Commission v. Chenery Corp., 332 U.S. 194, 196, 67 S. Ct. 1575, 1577, 91 L. Ed. 1995. The courts may not accept appellate counsel's post hoc rationalizations for agency action; Chenery requires that an agency's discretionary order be upheld, if at all, on the same basis articulated in the order by the agency itself:

"[A] simple but fundamental rule of administrative law * * * is * * * that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action * * *." Ibid.

For the courts to substitute their or counsel's discretion for that of the Commission is incompatible with the orderly functioning of the process of judicial review. This is not to deprecate, but to vindicate (see Phelps Dodge Corp. v. Labor Board, 313 U.S. 177, 197, 61 S. Ct. 845, 853, 854, 85 L. Ed. 1271), the administrative process, for the purpose of the rule is to avoid "propel(ling) the court into the domain which Congress has set aside exclusively for the administrative agency." 332 U.S., at 196, 67 S. Ct., at 1577, 91 L. Ed. 1995.

Even if the appellate counsel could properly supply an evaluation for the first time, his evaluation in this case is arbitrary, since it does not consider the record or quality of performance of the other individuals whose experience was compared by the Commission with Schreiber's.⁸

⁸ A detailed reply to counsel's evaluation is not necessary in view of its impropriety. It is appropriate, however, to note that he has improperly evaluated the failure of Schreiber to keep his program promises. The fact that Schreiber may have met the low watermark of the public interest and thereby induced the Commission to grant his station renewals, does not provide any answer to the question: How good was his performance? In every case in which past performance has been considered and deprecated by the Commission, the licensee, like Schreiber, had received a renewal of license.

Even if Schreiber's past performance was not "substandard", the performance of the others with whom Schreiber was compared was very much above standard. The Examiner made express findings on the very favorable performance of Wodlinger, the Altasses, and Baisch and Mazzie (32 F.C.C. at 944-46, 994, 998-1001, 1030-33). Not only did the Commission fail to assess the performance of these individuals, but the appellate counsel has failed to as well.

Counsel apparently could not rationalize away the Commission's refusal to consider the superior performance of these individuals, and his silence can only be viewed as a demonstration of the unfairness and invalidity of the procedure followed by the Commission.

Mr. Schreiber was an officer, director and general manager of the station involved. He was completely responsible for its operation, and there was no evidence submitted that he shared the executive responsibility for the station with anyone else (32 F.C.C. at 1043). To assert as does the Commission's brief, that he was not legally responsible for the activities of the station is only to provide a device for the Commission to blind its eyes to pertinent facts. At any event, even if the Commission may refuse to give independent weight to quality of performance of persons in Schreiber's position because they do not have stock ownership interest, certainly when the Commission considers the broadcast experience of such a person, it is then required to consider the demerits which attach to the operation which provided this very broadcast experience.

Counsel's defense of the Commission's action is inadequate for another reason. He concedes that the past performance of a stockholder would have to be considered, either as an independent matter or as reflecting on experience. It is on this basis that he distinguishes Toledo Blade, 25 F.C.C. 251 (Br. 34, footnote 15). But this distinction does not explain the failure of the Commission to consider the quality of performance of Leslie Atlass and Joseph Baisch, both of whom were stockholders in the respective stations whose operation gave rise to their respective experience (32 F.C.C. at 994, 1020, 1030-33). No rational explanation

can be presented to sustain the Commission's refusal to consider the quality of their performance. Since the instant case was decided, the Commission has expressly recognized that defects in the quality of performance of a minority stockholder must be considered even when he is inactive in the affairs of the station. Jefferson Standard Broadcasting Co., 33 F.C.C. 471, 485, 514. The ostensible reason for refusing to consider the quality of their experience in the instant case -- that they were only minority stockholders (32 F.C.C. at 925) -- must be rejected as irrational and contrary to the policy described by appellate counsel and followed by the Commission in other cases.

Even assuming that the quality of performance of Schreiber and the other individuals could be disregarded by the Commission, we think it is clear that on the basis of the record it was improper for the Commission to have preferred Schreiber on the basis of experience alone. The Commission and intervenor have not demonstrated the reasonableness of the Commission's judgment that Schreiber's experience was superior to the others. Indeed, even intervenor did not urge before the Commission that it should be accorded a preference over all the other applicants on the factor of broadcast experience. See R. 8900-8901. It conceded that Midland was to be preferred to itself, and even its claim of preference over the other applicants was based not on Schreiber's experience, but on the fact that Moline had two members of its Board of Directors with broadcast experience. This claimed preference was accorded no weight by the Commission.

The failure of the Commission properly to assess the record bearing on experience is all the more important because of the decisive weight which the Commission gave to broadcast experience in this case. In our brief, we claimed that this was a case of first impression. We stated that "broadcast experience of principals has never before been held to be a decisive criterion. A search of past precedents reveals no other case in which it was the sole basis for the award of a station." (Appellants' Br. 26.) Because the Commission had never before given bare broadcast

experience such decisive weight,⁹ appellants contended that the Commission was required to spell out the reasons for its judgment that such bare broadcast experience could be the sole basis for the award of a channel.

The appellate counsel takes the position that "since the use of broadcast experience as a comparative factor is of long standing, no additional explanation by the Commission of its use here was necessary." (F.C.C. Br. 27-28). This position, however, is predicated on the assumption that the Commission has previously afforded bare broadcast experience the weight attributed to it in this case and the Commission therefore did not have the obligation to make clear the basis for its decision, since the basis for its judgment had previously been set forth. The crux of the controversy therefore relates to appellants' claim that this is a case of first impression and that the Commission has never before arrived at the result it has reached in this case.

The Commission's counsel is able to refer to only one case where he can claim that broadcast experience was the determinative factor. He has in a footnote (footnote 13, p. 28) cited Television Broadcasters, 27 F.C.C. 727, asserting that in that case "experience was the determinative factor." A reading of Television Broadcasters demonstrates that the General Counsel is in error. In that case it was not bare broadcast experience which was the determinative factor, but rather broadcast experience tied to local residence and the operation of a station in the same local

⁹ The Commission's brief (pp. 23-24) argues that the Commission did not, as appellants urge, favor intervenor only because the showing in other areas was considered unimportant as compared with the showing in broadcast experience, but, rather, because intervenor "had made a better overall showing than any of the other applicants" (32 F.C.C. at 931). This statement is, however, inconsistent with counsel's own statement on page 26 of its brief that "although Community made a somewhat better showing than Moline in the area of integration of ownership and management, local residence, and diversification of control of the media of mass communications, Moline demonstrated substantial superiority in the area of broadcast experience, in which Community was ranked fourth"! It is patently obvious that the mere difference between the experience of Community's Wodlinger (with ten years of experience at a local Quint City TV station) and that of intervenor's Schreiber (with ten years of experience at a Chicago station, but none since 1956) was held to outweigh the superiority of Community over intervenor in three of the Commission's most important and time-honored criteria -- local residence, integration, and diversification of the ownership of mass media. A comparable analysis can be made as between intervenor and the other applicants. In each case Schreiber's bare experience was held to outweigh everything else.

community. Unlike its decision in this case, the Commission in Television Broadcasters was careful to spell out that it was not bare broadcast experience that was given heavy weight; it made clear that the broadcast experience had been obtained in the operation of a station in the same community in which the new station was to be located, and that because of this coalescence of knowledge of local needs and broadcast experience, the qualifications of the applicant became highly significant.¹⁰ The Commission was required in this case to follow the same procedure, and to make clear the reasons for its conclusion that bare experience could be the determinative factor. The General Counsel's attempt to do for the Commission what the Commission would not do for itself cannot be received as an acceptable substitute for the Commission's own statement of its reasons for its decision. Burlington Truck Lines v. United States, 83 S. Ct. 239 (1962). The Commission's use of "experience" as a semantic device upon which to decide the instant case reduces the administrative process to "word jugglery" -- a procedure which is patently improper. See Felix Frankfurter, Mr. Justice Jackson, 68 Harv. L. Rev. 937, 938 (1955).

III. FORM OF DECISION

The Commission and intervenor contend that the question of the "form" of the Commission's decision was not presented to the Commission as required by Section 405 of the Communications Act and, therefore, is not properly before the Court.

Appellants would agree that if mere "form" alone were the issue, its opponents' point might be well taken. As recognized in appellants' original Brief (p. 48), the Commission has wide discretion as to the "form" of its decisions, so long as their substance is made clear. It is the underlying reason and basis for the decision which has been lost in the obscurity

¹⁰ As a matter of fact, since Community's Wodlinger had gained his long experience in the operation of WOC-TV in the Quint-Cities itself, Television Broadcasters would require the Commission to conclude that Wodlinger's experience was more valuable than that of Schreiber which was obtained in Chicago.

of the instant opinion. As in Saginaw Broadcasting v. Federal Communications Commission, 68 U.S. App. D.C. 282, 291-92, 96 F. 2d 554, 563-64, cert. den. 305 U.S. 613, the decision here is not "based upon that careful consideration of the evidence which is properly to be expected from an unbiased body of experts discharging a function so important from the standpoint of both the parties and the public." As a result, a rational basis for the decision not only fails to shine through, but is lost in a veil of denounced policies and precedents, leaving the present and future litigants before the Commission in a state of bewilderment and uncertainty as to what is the law.

The Commission has reached a result here that is inexplicable in the light of its prior decisions and has laid a smokescreen over its thought processes in a manner which defies review. To use Judge Bazelon's words in his brief dissent in Beachview Broadcasting Corp. v. Federal Communications Commission, 104 U.S. App. D.C. 377, 262 F. 2d 688, rehearing den. 106 U.S. App. D.C. 341, 273 F.2d 76, cert. den. 359 U.S. 936, the Commission has here employed "shifting emphasis of comparative criteria obliterating any predictable pattern of decision." If decisions such as this go unchallenged and unchanged, respect for the decision making process of the administrative agency cannot long endure.

Respectfully submitted,

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